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No. 695

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IN THE

Supreme Court of the United States

OCTOBER TERM 1947

UNITED STATES OF AMERICA, *Appellant*

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

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BRIEF FOR APPELLEES

OPINION BELOW

The opinion of the district court (R. 13) has not yet been reported.

JURISDICTION

This Court has jurisdiction under the Criminal Appeals Act, as amended by the Act of May 9, 1942, 56 Stat. 71, 18 U.S.C. Supp. V, 682.

QUESTIONS PRESENTED

1. Whether, as the court below held, that portion of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which prohibits expenditures by a labor organization in connection with a federal election is an unconstitutional abridgment of the rights of freedom of speech, press and assembly, protected by the First Amendment.

2. Whether that portion of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which prohibits expenditures by a labor organization in connection with a federal election arbitrarily discriminates against labor organizations, their officers and their members in violation of the Fifth Amendment.

3. Whether that portion of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which prohibits expenditures by a labor organization in connection with a federal election fails to provide an ascertainable standard of guilt in violation of the Fifth and Sixth Amendments.

4. Whether that portion of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which prohibits expenditures by a labor organization in connection with a federal election abridges rights reserved to the people by the Ninth and Tenth Amendments.

STATUTE INVOLVED

"Sec. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U.S.C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

"Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution published by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization'

means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (Public Law 101—80th Congress, 1st Session.)

STATEMENT

On February 11, 1948, an indictment was returned against appellees charging violation of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947.

The first count of the indictment (R. 2–6) alleges that appellee, Congress of Industrial Organizations, a labor organization, made expenditures from its funds for the publication of a weekly periodical, "CIO NEWS", including the issue of July 14, 1947, in which, in anticipation of the holding of a special election to select a representative in Congress, there appeared an article, "Test of Political Freedom".

The article, the full text of which is attached to this brief as Appendix I, was written by appellee Philip Murray, President of the Congress of Industrial Organizations. It announced that a special Congressional election was to be held in the City of Baltimore; that one of the candidates had been officially approved and endorsed by the CIO Political Action Committee for the State of Maryland and that the opposition candidate was known for his anti-union views and activities.

The article further set forth that the Congress of Industrial Organizations had been requested by representatives of its members in the Congressional District involved to urge members of CIO unions to cast their votes for the favored candidate, Judge Garmatz.

The article expressed the view that the Labor-Management Relations Act, 1947, is a bad law, that its sponsors had intended to stifle the voice of labor in political matters and that Judge Garmatz would act for the repeal of the law, an objective deemed by appellee Congress of Industrial Organizations to be in the public interest.

On behalf of the members of appellee Congress of Industrial Organizations in Baltimore, the article urged that all mem-

bers residing and voting in the Congressional District in question cast their votes for Judge Garmatz and expend every effort to the end that others might do likewise.

The indictment recites that appellee Congress of Industrial Organizations made certain expenditures in publishing and circulating the issue of the "CIO NEWS" containing the aforesaid article and that the Congress of Industrial Organizations caused one thousand extra copies of the "CIO NEWS" containing the aforesaid article to be circulated in the Congressional District in question.

Appellee Philip Murray is charged in the second count of the indictment (R. 6) with a violation of the statute for the sole reason that, as President of the Congress of Industrial Organizations, he consented to the expenditures alleged in the first count.

On February 20, 1948, appellees filed with the court below a motion to dismiss the indictment (R. 7) on the ground that that portion of the statute here involved violates rights protected by the First, Fifth, Sixth, Ninth and Tenth Amendments to the Constitution of the United States.

The court below, in an opinion filed on March 15, 1948, sustained the motion to dismiss the indictment (R. 13–19). The court held that the indictment charged an offense under Section 304 of the Labor-Management Relations Act, 1947, but that that portion of the statute prohibiting the expenditure by a labor organization of funds in connection with a federal election is, on its face, unconstitutional. The court ruled (R. 16),

> "I am of opinion that the questioned portion of Section 304 of the Act is an unconstitutional abridgment of freedom of speech, freedom of the press and freedom of assembly. At no time are these rights so vital as when they are exercised during, preceding or following an election. If they were permitted only at times when they could have no effect in influencing public opinion, and denied at the very time and in relation to the very matters that are calculated to give the rights value, they would lose that precious character with which they have been clothed from the beginning of our national life."

The court found it unnecessary to pass upon appellees' additional contentions with respect to the unconstitutionality of the statute and stated (R. 19),

"Defendants contend that the legislation is vulnerable also as an arbitrary discrimination against labor organizations in violation of the Fifth Amendment, and because it does not fix an ascertainable standard of guilt, as required by the Fifth and Sixth Amendments. I do not deem it essential to decide these questions, since I have concluded that the challenged provision of the statute is invalid because of abridgment of rights guaranteed by the First Amendment."

Thereafter the Government filed a direct appeal to this Court under the Criminal Appeals Act and on March 29, 1948, this Court noted probable jurisdiction (R. 23).

SUMMARY OF ARGUMENT

I.

This case presents the issue of whether Congress may constitutionally make it a crime for a labor organization to publish and circulate a newspaper endorsing a candidate for federal office and whether the president of a labor organization commits a crime when he consents to the publication and circulation of such a newspaper.

An unusual significance attaches to this case because the statute which it places in issue—a portion of Section 304 of the Labor-Management Relations Act, 1947—invades the right of a free press, because it bars free access to the political process so vital to the preservation of a democratic society and because its restraints are imposed upon a labor organization and its president who seek to speak in the political arena for millions of working people and to participate in a pending election which presents issues vital to their interests.

Section 304 was incorporated in the Labor-Management Relations Act, 1947, although it is wholly unrelated to issues of labor-management relations and although Congressional Committees which had considered the problem had warned against the constitutional dangers implicit in a ban of the type contained in this section. The restraint contained in the statute is bolder and more deliberate than that involved in cases in which this Court has in the past acted to affirm freedom of

the press. *Near* v. *Minnesota*, 283 U. S. 697; *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233.

The statute does not directly proscribe the exercise of a right; it prohibits the expenditures which finance that exercise. But this circumstance presents an additional basis for invalidating the statute on its face, since there is inevitably imbedded in the statute an all-inclusive ban upon all types of activity involving civil rights inasmuch as such activity cannot be engaged in by appellees without expenditures. *Bowe* v. *Secretary of the Commonwealth*, 320 Mass. 230, 69 N. E. (2d) 115.

To deny rights of political expression to any group is to cut it off from an opportunity to participate in the processes which have their outcome in legislative and other decisions affecting its interests. *United States* v. *Carolene Products Co.*, 304 U. S. 144. Congress therefore cannot be the sole judge of the propriety of curtailing rights of political expression. If this were permitted interferences with the political mechanism might well perpetuate themselves. The Government has ignored this fundamental aspect of the case and justifies Section 304 primarily on the ground that the end sought is a permissible one.

This application of the usual presumption of validity to a statute which on its face limits political rights is plainly erroneous. For when it is sought to curtail basic rights of expression the statute must be drawn narrowly to deal with the precise evil which the legislature is seeking to curb. A substantial showing of a necessity for the limitation must be made and the conduct regulated must be specifically defined to insure security for free expression. *Schneider* v. *New Jersey*, 308 U. S. 147; *Thornhill* v. *Alabama*, 310 U. S. 88; *Bridges* v. *California*, 314 U. S. 252. Nor does *United Public Workers* v. *Mitchell*, 330 U. S. 75, hold to the contrary. That case dealt with Congressional power with respect to government employees not with the regulation of elections. The conduct involved therein was partisan political activity not the expression of political views and, in contrast to the absolute prohibition of Section 304, there was there involved a mere regulation.

The claimed justification of the statute to insure the purity of elections is the strongest argument against it. The suppression of political freedom endangers rather than preserves the purity of the electoral process. This was recognized from the very beginning of our legislative experience and has been repeatedly emphasized by the Court. *Stromberg* v. *California*, 283 U. S. 359; *Whitney* v. *California*, 274 U. S. 357. Nor may the statute be justified on the theory that it removes the influence of aggregate wealth. Here expenditures are not limited; they are totally banned. And only the expenditures of labor organizations are prohibited not those of other unincorporated associations, even when composed solely of trade union members.

But labor organizations have from the very beginning of their functioning participated in legislative and political activities and programs. Today, with the enlarged role of government in economic life, such political activity is essential in order to preserve the gains achieved through self-organization and collective bargaining. To deny workers the right of collective political action would be to promote strikes. The Government itself has recognized, in construing the Federal Regulation of Lobbying Act, that political activity is not foreign to the fundamental purposes of labor organizations.

Certainly it cannot be questioned that labor organizations enjoy constitutional protection in legislative and political activities unrelated to federal elections. But such activities cannot be separated for constitutional purposes from the prohibited election activities. All of the legislative and political activities of labor organizations are part of an inseparable whole and necessarily include support for political candidates. If the legislative and political activities outside of the scope of the statute enjoy constitutional protection then the activities in connection with the election are likewise privileged. *Bridges* v. *California*, 314 U. S. 252; *West Virginia State Board* v. *Barnette*, 319 U. S. 624.

Political activity on the part of labor organizations is not only in accord with the historic practices of such organizations but is expressly provided for in their constitutions. The Government's case thus reduces itself to a claim that the ma-

jority rule principle must be abrogated where political activity is involved. But all of the reasons which justify the majority rule principle in connection with economic activity apply equally to political activity. *DeMille* v. *American Federation of Radio Artists*, 31 Cal. (2d) 137, certiorari denied, April 19, 1948, No. 679, this Term. Non-consenting individuals and minorities are not, under American labor jurisprudence, deemed to be coerced by majority decisions in the economic sphere. Nor is the majority rule principle regarded as inapplicable in connection with legislative and political activity which falls short of participating in election campaigns. How can it be said that coercion exists merely because the activity involved is in connection with an election? Moreover, the Government's justification of the statute on the theory that it coerces a non-consenting minority must be rejected because, in contrast to the British precedents, the application of the statute does not turn upon assent. The Government is required to confine itself to the claimed abuse in order to avoid a conflict with civil rights.

The phrase "expenditure in connection with any election . . . or in connection with any primary election or political convention or caucus" is so vague as to conflict with the First and Fifth Amendments. A vague criminal statute involving civil rights is far more injurious than an ordinary criminal statute since it imposes a previous general restraint upon activities outside of its actual purview and creates an opportunity for discrimination against unpopular minorities. *Stromberg* v. *California*, 283 U. S. 359; *Thornhill* v. *Alabama*, 310 U. S. 88. The phrase "in connection with any federal election" has no commonly accepted meaning and neither the dictionary nor the statute nor the legislative history afford an ascertainable standard for determining the meaning of these words. As the phrase is written it is all-embracing. The term "expenditure" would interdict every form of conduct engaged in by labor organizations which could be labeled "in connection with" a federal election. The phrase as a whole is one of boundless scope, the meaning of which would baffle intelligent men.

The very efforts of the Government to supply meaning to

the statute reveal its constitutional weakness. The Government urges that the phrase "in connection with any election" means "for the purpose of influencing the result of an election". But this *ad hoc* gloss is not justified either by context or legislative history and, since it seeks to give meaning to a portion of the statute by reference to the defining sections of the Federal Corrupt Practices Act, it is inconsistent with the Government's failure to go to those sections in explaining the meaning of the term "expenditure". In addition, the Government's explanation of the phrase, even if otherwise acceptable, leaves the statute fatally vague because the term "expenditure" is undefined.

In an effort to impart to the term "expenditure" some defined limitations, the Government refers to the legislative debates and the attempts of the sponsors of the law to suggest limitations upon the seemingly limitless reach of the literal words of the statute. The sponsors were undoubtedly confronted with the dilemma of seeking to avoid unconstitutional all-inclusiveness on the one hand and an unconstitutionally vague limitation in scope on the other. This dilemma has not been resolved. For the legislative history merely emphasizes the vagueness of the statute and makes its applicability turn upon such factors as the source of the expenditures involved, whether from subscriptions or dues; the nature of the expenditures, whether exceptional or routine, and the purpose of the expenditures, whether to launch a diatribe or not.

The Government's failure to resort to the defining sections of the Federal Corrupt Practices Act to throw light upon the term "expenditure" is no accident. The definition of "expenditure" contained in that Act would merely extend to Section 304 the confusion which already exists in connection with the 1925 Act. The vagueness of the definition of "expenditure" in the 1925 Act has been commented upon by a Congressional Committee.

II.

The denial of political rights to a labor organization, such as appellee Congress of Industr Organizations, is a denial of political rights to the millions of its members who have formed

and joined appellee in order to achieve political goals which as individuals would be beyond their accomplishment.

The considerations which inspire men and women to join labor organizations for economic purposes may not be realistically distinguished from those which prompt them to common political action and the inequality of bargaining power which besets the employee in the economic sphere is dwarfed by corresponding evils in the political sphere. Thus, representative election figures for the national election campaigns of 1940 and 1944 show that powerful individuals and their families, prominently identified with employer interests, contributed huge amounts to political campaigns. Unless the members of labor organizations are given the right collectively to direct their political strength against the strength of these powerful individuals and family groups, the democratic framework of our entire society will be endangered.

III.

The statute is invalid because it is aimed solely at labor organizations and no other type of unincorporated association. Viewed in a context of political reality, this is arbitrary discrimination, wholly unjustified by our national experience prior to the passage of the Act. The available literature demonstrates that unincorporated associations with an anti-labor viewpoint have played a formidable role in our political and legislative processes.

The discrimination which is embodied in the law attains constitutional status particularly because it is a discrimination in the field of civil rights. It is an attempt to substitute a monopoly for a free trade in ideas. The seriousness of the discrimination is, moreover, emphasized by the fact that the same upper-income groups which exert such a one-sided influence on elections by virtue of their contributions and expenditures dominate the opinion-influencing mechanisms in this country generally. Section 304 has thus intensified pre-existing inequalities in our political life. The discriminatory handicap imposed by the statute can be well appreciated when it is realized that the costs of reaching the electorate today are enormous. Unless labor organizations are freed of the statutory restraints there is a serious danger that our entire elec-

toral process will fall prey to small undemocratic wealthy groups.

IV.

Political activity is one of the fundamental rights guaranteed to the people by the Constitution. This right defines the character of our government and our civil rights are merely guaranteed so that this right shall not be destroyed by arbitrary official action. The federal government is devoid of the power to cut off the right of political expression. The asserted basis for Section 304 is Article I of the Constitution but that Article merely empowers Congress to preserve the purity of the electoral process. In no case under Article I has the power of the government been sustained to suppress civil rights or rights of political expression. The exercise of this power may not be employed to destroy the inviolate right of the people to engage in political activity or to deny to a free people the means of insuring that elections will be representative.

ARGUMENT

I.

THAT PORTION OF SECTION 313 OF THE FEDERAL CORRUPT PRACTICES ACT, AS AMENDED BY SECTION 304 OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, WHICH PROHIBITS EXPENDITURES BY A LABOR ORGANIZATION IN CONNECTION WITH A FEDERAL ELECTION ABRIDGES APPELLEES'[1] FREEDOM OF SPEECH AND FREEDOM OF THE PRESS IN VIOLATION OF THE FIRST AMENDMENT

This case presents to the Court an issue of transcendent importance. That issue is whether the Congress may constitutionally make it a crime for a labor organization to publish and circulate a newspaper endorsing a candidate for federal office and whether the president of such a labor organization commits a crime when he consents to the publication and circulation of such a newspaper.

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[1] Appellees, as the court below held (R. 16), are protected by the Bill of Rights. See, for example, *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233, and *Bridges* v. *California*, 314 U. S. 252.

Every case in which the Court is called upon to vindicate civil rights and to overthrow a statute invading civil rights presents issues of more than routine importance. In this case, however, a peculiar significance attaches to the prohibition for three basic reasons:

1. The right which Congress has invaded is the right to a free press. Few rights in our society are more important.

> "The only security for all is in a free press. The force of public opinion cannot be resisted, when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary to keep the waters pure." Jefferson to Lafayette, *Writings of Thomas Jefferson* (Wash. ed.), vol. 37, p. 325.

The lessons involved in obtaining freedom from an oppressive government impressed the framers of the Constitution with the key importance of a free press. The Continental Congress in its letter sent to the Inhabitants of Quebec (October 26, 1744) said:

> "The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs." *Journal of the Continental Congress* (1904 Ed.), vol. I, pp. 104, 108.
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> "A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves." *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233, at p. 250.

Nor does the high constitutional status which a free press enjoys disappear because the newspaper involved is a small one with a limited circulation among working people, for the restraints upon freedom of the press which it was the intention of the Constitution to remove were especially directed at curtailing the circulation of newspapers, "particularly among the cheaper ones, whose readers were found among the masses of the people". May, *Constitutional History of England* (7th ed.), vol. 2, p. 245. Liberty of the press "is essential

to the poorly financed causes of little people". *Martin* v. *City of Struthers, Ohio*, 319 U. S. 141, 145.

As we will indicate below, far less serious invasions of the freedom of the press than that presented by the statute involved herein have been repeatedly condemned by this Court as inconsistent with the basic rights guaranteed by the Constitution.

2. The restraints created by the statute present a compelling case for judicial intervention because they seek to bar access to the political process. The statute prevents the exercise of civil rights precisely in that area where such exercise is most vital to the preservation of a democratic society.

3. The injuries thus imposed would be profound if imposed at any time and upon anybody. They are particularly serious when imposed upon appellees, for appellees are an unincorporated association and an officer thereof who seek to speak in the political arena for millions of members of labor organizations who have joined together for the precise purpose of achieving through group action what as individuals they are powerless to do. Moreover, the restraints are imposed on the eve of an election which presents issues—of peace and war, prosperity and depression, security and want—of tremendous importance to working people of America whom appellees represent.

A. **The statute and its background**

The statute now before the Court was passed as Section 304 of the Labor-Management Relations Act, 1947. Although it is a part of a law dealing with labor-management relations it is in no way addressed to the problems of labor-management relations. Indeed, a search of the hearings before the House and Senate Committees which heard testimony with respect to the bills which subsequently became the Labor-Management Relations Act, 1947, reveals that no testimony whatsoever was presented to either the House Education and Labor Committee or the Senate Committee on Labor and Public Welfare on the subject contained in Section 304.

Section 304 amends Section 313 of the Federal Corrupt Practices Act. In 1943 the Federal Corrupt Practices Act was

amended by Public Law 89—78th Congress, the Smith-Connally Act (June 25, 1943, c. 144, 57 Stat. 163). Section 9 of the Smith-Connally Act, which expired on June 30, 1947, barred labor organizations from making contributions in connection with federal elections.[5]

Between the passage of the Smith-Connally Act and the enactment of Section 304 a number of Congressional Committees investigated the subject of the political activities of labor organizations. See *Report of Special Committee to Investigate Presidential, Vice-Presidential and Senatorial Campaign Expenditures, 1944* (S. Rep. No. 101, 79th Cong., 1st Sess.); *Report of the Special Committee to Investigate Campaign Expenditures, House of Representatives, 1944* (H. Rep. 2093, 78th Cong. 2d Sess.); *Report of the Special Committee to Investigate Senatorial Campaign Expenditures, 1946* (S. Rep. No. 1, Pt. 2, 80th Cong., 1st Sess.); and *Report of the Special Committee on Campaign Expenditures, 1946, to the House of Representatives* (H. Rep. No. 2739, 79th Cong., 2nd Sess.).

Only the 1944 Senate Investigating Committee report considered the problem of the constitutionality of legislation such as is contained in Section 304.[6] The 1944 Senate Committee recommended the complete revision of laws governing campaign contributions and expenditures. Such revised legislation, the Committee urged, "should not limit the right of responsible political organizations to present their views to the electorate or infringe upon freedom of speech or of the press and it should not impede free expression of opinion on political matters". S. Rep. No. 101, 79th Cong., 1st Sess., p. 80.

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[5] The Smith-Connally Act was passed over the veto of President Roosevelt. In commenting upon Section 9, President Roosevelt stated (Sen. Doc. No. 75, 78th Cong. 1st Sess.):

"This provision obviously has no relevancy to a bill prohibiting strikes during the war. . . . If there be merit in the prohibition, . . . careful consideration should be given to the appropriateness of extending the prohibition to other non-profit organizations."

[6] The 1946 Senate Committee recommended that legislation be enacted to cover the field of "expenditures." However, the Report makes it clear (at p. 31) that, "No attempt should be made to restrict the right of any group of individuals to associate freely and to speak and publish to the body politic their individual and collective views on political issues or candidates. Our Federal Bill of Rights guarantees this opportunity."

A minority of the Committee suggested a prohibition upon expenditures as well as contributions to be applied in connection with federal elections to a corporation, bank or labor organization. A majority of the Committee opposed this minority recommendation on the following grounds (Report, pp. 83–84):

"The committee as a result of its investigation unanimously came to the conclusion that prohibitions and sanctions had failed to prevent pernicious political activity in Federal elections. They concluded that free and prompt publicity as to campaign contributions and expenses would be more likely to achieve the desired result. Therefore, its recommendations as set forth above stress the reduction of prohibitions and the increase of publicity. So this last proposal is inconsistent with the general theory of the recommendations.

"Moreover, the extension of the prohibition to include expenditures would tend to limit the rights of freedom of speech, freedom of the press, and freedom of assembly as guaranteed by the Federal Constitution. The investigations which the committee has made have brought out the fact that many organizations claiming to be educational are claimed by others to be purely political. The line of demarcation is difficult, if not impossible to draw, since it depends to a considerable extent upon human motives. An expenditure made in connection with an election may well be for the publication of pamphlets, or newspaper articles or speeches justifying the point of view of the organization paying for it. An editorial in a newspaper states its position. The reproduction of that editorial in the form of a pamphlet or a speech based on that pamphlet may state the position of the organization paying for it. Free discussion of political questions should be encouraged, not prohibited.

"Furthermore, the prohibition of an expenditure as distinguished from a contribution comes in an entirely different category from the prohibition of contributions in the meaning of the Corrupt Practices Act.

"While the above objections apply to a corporation, and a bank, and a labor organization, all three mentioned in the above recommendation, they are stronger when applied to a labor organization, because the latter is not a legal person like a corporation, but an aggregation of individuals like a church, or a fraternal organization, or a social group.

"It should be noted that the objection to the recommendation is confined to the *prohibition* of expenditures, not to the *publication* of them. Full and complete publicity of the latter should be exacted." S. Rep. No. 101, 79th Cong., 1st Sess., pp. 83–84.

Section 304 achieved three results:

1. It made the restraints of the Smith-Connally Act permanent.

2. It broadened the area of the prohibition to include not only contributions but also expenditures.

3. This broadened prohibition is applied not merely to final elections as formerly but also to primaries, conventions and caucuses.

Section 304 was passed over the veto of President Truman. In dealing with the constitutional aspects of Section 304, the President stated (House Doc. 334, 80th Cong., 1st Sess., pp. 9–10):

"In undertaking to restrict political contributions and expenditures, the bill would prohibit many legitimate activities on the part of unions and corporations. This provision would prevent the ordinary union newspaper from commenting favorably or unfavorably upon candidates or issues in national elections. I regard this as a dangerous intrusion on free speech, unwarranted by any demonstration of need, and quite foreign to the stated purposes of this bill."

It is important to delineate the precise impact of the law. While Section 304 applies to labor organizations, its restraints do not apply to any other type of unincorporated association. Moreover, Section 304 applies to all corporations without distinction. It embraces not merely ordinary business corporations whose activities in connection with federal elections are not a part of their normal activities but charitable and nonprofit corporations as well as corporate organs of public information and opinion, such as newspapers and radio stations. As President Truman pointed out in his veto message (*supra*):

"Furthermore, this provision can be interpreted as going far beyond its apparent objectives, and as interfering

with necessary business activities. It provides no exemption for corporations whose business is the publication of newspapers or the operation of radio stations. It makes no distinction between expenditures made by such corporations for the purpose of influencing the results of an election and other expenditures made by them in the normal course of their business 'in connection with' an election. Thus, it would raise a host of troublesome questions concerning the legality of many practices ordinarily engaged in by newspapers and radio stations."

B. Section 304 on its face violates freedom of speech and freedom of the press.

1. The purpose of Section 304 and the nature of the rights infringed by it.

It is important to bring into focus the precise nature of the activities for which appellees have been indicted.

Appellee Congress of Industrial Organizations has been indicted for the sole reason that it printed an article in support of a political candidate for election to a federal office in a weekly newspaper, the "CIO NEWS", owned and published by said appellee, and that it caused the issue of said newspaper containing said article to be circulated.

Appellee Philip Murray has been indicted for the sole reason that he consented to the activities of the Congress of Industrial Organizations, set forth in the preceding paragraph.

This is not a case in which a civil liberty has incidentally fallen victim to a broad regulatory statute directed at other ends. In this case the precise purpose of the enactment was to interfere with appellees' civil rights. It was the specific design and aim of Section 304 of the Labor-Management Relations Act, 1947, to silence the press of labor organizations.

Moreover, we are not dealing with a case in which a regulation directed at the press is subject to judicial scrutiny merely because its effect is to impose a restraint, either prior or subsequent, on its freedom. The problem here is not whether a tax, a licensing ordinance, an ordinance dealing with a breach of the peace, is in conflict with constitutional guarantees. It was the intent of the framers of Section 304

purely and simply to prohibit the functioning of the labor press in connection with federal elections. It is accurate to state that there has never been a case before this Court involving the freedom of the press in which the motive to restrain has been so clear and unadorned.

But this Court has repeatedly demonstrated a jealous guardianship of the freedom of the press which Section 304 seeks to destroy. In *Grosjean* v. *American Press Co., Inc., supra*, the Court held unconstitutional a state statute imposing a licensing tax on the privilege of engaging in the business of selling advertising upon the publishers of all newspapers or magazines having a weekly circulation of more than 20,000 copies.

In condemning the tax the Court stated (at p. 250):

> "It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees."

If a tax directed at the press cannot withstand the Constitution, what shall be said not of a tax but of a complete and outright prohibition such as is presented by Section 304?

In *Near* v. *State of Minnesota*, 283 U. S. 697, the Court struck down a statute providing for the suppression of defamatory newspapers by injunction unless the publisher could prove truth and good motive of the defamatory charges. The Court pointed out that the statute, upon the issuance of an injunction, imposed an unconstitutional previous restraint upon publication. In the present case, if appellees desire to publish even a harmless article concerning a candidate in a federal election they are subject not to censorship but to absolute prohibition.

But the fact that an article is an endorsement or censure of a public official can never supply a basis for a denial of constitutional protection. This was made clear in the *Near* case itself when the Court observed that the press must be particularly free to convey information with respect to public officials. The Court stated (at pp. 716–717):

> "The conception of the liberty of the press in this country had broadened with the exigencies of the colonial period and with the efforts to secure freedom from oppressive administration. That liberty was especially cherished for the immunity it afforded from previous restraint of the publication of censure of public officers and charges of official misconduct."

The very complexity of government and the danger to its well-being by unfaithful officials "emphasizes," the Court said (at pp. 719, 720), "the primary need of a vigilant and courageous press, especially in great cities." And in the *Grosjean* case the Court pointed out (at p. 250) that "since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern."

Nor is a cure for the impairment of appellees' constitutional rights effected by the circumstance that one thousand extra copies of the publication were circulated in the area where the election took place. Liberty of circulation is a vital aspect of liberty of the press.

Thus, in *Lovell* v. *City of Griffin*, 303 U. S. 444, the Court held unconstitutional an ordinance prohibiting the distribution of literature of any kind without permission from the City Manager. The Court there pointed out that freedom of speech and freedom of the press "are among the fundamental personal rights and liberties" protected by the Constitution. The Court emphasized, moreover, that:

> "The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed without the circulation the publication would be of little value.' *Ex Parte Jackson*, 92 U. S. 727."

See, also, *Winters* v. *State of New York*, decided March 29, 1948, No. 3, this Term.

In considering the nature of the right which has been invaded, it is important to emphasize that it is not only the right to speak, print and publish which is invaded by the statute. The right of the members of appellee to be informed has been cut off as well. The article which furnished the basis of the

indictment against appellees was composed, published and circulated because Congress of Industrial Organizations members in Baltimore thought it was vital that workers in Baltimore be informed of the issues involved in the election in which Judge Garmatz was a candidate.

As this Court has pointed out in *Martin* v. *City of Struthers, Ohio*, 319 U. S. 141, 146–147:

> "Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved."

See, also, *Marsh* v. *Alabama*, 326 U. S. 501.

We believe that further citation of authorities is superfluous to establish the fact that what is involved here is a deliberate infringement of that most vital of all liberties, namely, freedom of press and freedom of speech, and that these liberties enjoy constitutional protection.

2. The fact that the prohibition is upon expenditures rather than directly upon the exercise of the right does not save the statute; a prohibition upon expenditures is the equivalent of a ban upon freedom of speech, press and assembly, rights which cannot be exercised by appellees without expenditures.

It is submitted that a prohibition upon expenditures in connection with an election is tantamount to, and may not be distinguished from, a prohibition upon the activities which such expenditures necessarily finance and underwrite. Indeed, the outlawry of expenditures emphasizes rather than detracts from the constitutional infirmities of the statute. This is so because whatever the boundaries of the meaning of the term "expenditures",[4] there can be no question that the effect of the statute is to outlaw the exercise of any right in connection with federal elections, since it is difficult to conceive of any activity in which appellees might engage in connection with an election which would not require the outlay of some funds.

This measure thus on its face would prevent a labor organization from holding a meeting for the purpose of advocating

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[4] We discuss the constitutional implications flowing from the vagueness of this term *infra*, p. 51.

the election or defeat of a particular political candidate. It would preclude a labor organization from organizing a public gathering to advocate the election of a candidate pledged to the defeat of such a measure as Section 304.

A labor organization under this statute could not place at the disposal of a candidate its own hall. It could not engage radio time to denounce a candidate who had identified himself with interests fundamentally opposed to those basic to the interests of the defendants. Nor could it pay the salary or expenses of an individual for the purpose of permitting him to participate in a political campaign.

Handbills, placards or union newspapers advising the union membership of the voting records of public officials could not be published or distributed at election time to advocate either the election of labor's friends or the defeat of labor's enemies. Paid advertisements and radio publications for the same purposes would be likewise proscribed.

No matter how dangerous the threat presented by a candidate to the fundamental interests of a labor organization, it is powerless under this law to speak and to inform the people of its views. It could not send to a single member a penny postcard dealing with such a candidate. It could not even send a delegate or observer to a political convention.

It could oppose bad laws but not "in connection with any election". It could endorse good laws but at all times both its opposition and its endorsement would be undertaken at the peril of crossing the line at which such opposition or endorsement or advocacy could be regarded as being "in connection with any election".

Moreover, a labor organization could not sponsor a public meeting in connection with an election for the purpose of hearing the views of candidates of various political parties with respect to issues of importance to its membership since such a meeting would inevitably require expenditures.

The traditional campaigns on the part of labor organizations prior to federal elections to "get out the vote" would, since they require expenditures, be proscribed by the statute. And the publication of voting guides and analyses of the voting records of candidates would likewise be condemned.

A recent case, *Bowe* v. *Secretary of the Commonwealth*, 320 Mass. 230, 69 N.E. (2d) 115, disapproving a proposed Massachusetts ban on expenditures by labor organizations similar to that contained in Section 304, establishes both that a ban upon union expenditures in elections is equivalent to a ban upon the exercise of civil rights which such expenditures finance and that a prohibition in that form broadly violates constitutional rights.

The proposed law provided:

> "No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, or any company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth, no officer or agent acting in behalf of any corporation mentioned in this section, and no labor union or any person acting in behalf thereof shall directly or indirectly give, pay, expend or contribute, any money or other valuable thing in order to aid, promote or prevent the nomination or election of any person to public office, or to aid, promote or antagonize the interests of any political party, or to influence or affect the vote on any question submitted to the voters."

The Supreme Judicial Court of Massachusetts unanimously held that the proposed law was an unconstitutional invasion of freedom of the press.* The following language used by the court, in our view, completely disposes of Section 304:

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*The only other states in addition to Massachusetts which have attempted to legislate with respect to contributions and expenditures by labor unions in connection with political affairs are Alabama, Colorado, Indiana, Oregon, Pennsylvania and Texas. The Alabama provision (Ala. Code Supp. 1943, Tit. 26, Sec. 3920) forbidding political contributions by unions was struck down in *Alabama Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810 (1944). The Alabama Supreme Court held that a prohibition in the statute on an organization of employers of labor was invalid under Section 45 of the Alabama Constitution since it bore "no relation to the subject of the Act" (at p. 830). The Court reasoned that since the intent of the legislature had been to equalize employers and employees where employers were freed of the prohibition, employees were likewise freed. The Colorado prohibi-

"The liberty of the press is enjoyed, not only by individuals, but also by associations of individuals such as labor unions (*Hague* v. *Committee for Industrial Organization*, 307 U. S. 496), and even by corporations, although a corporation is not a 'citizen' and must find its protection against abridgment of its liberty by State action in the due process clause rather than the privileges and immunities clause of the Fourteenth Amendment. *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233, 243, 244. Compare *Western Turf Association* v. *Greenberg*, 204 U. S. 359, 363, *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, 527, and for an appreciation of the divergence in the authorities *Independent Service Corp.* v. *Tousant* (Dist. Mass.) 56 Fed. Sup. 75, 78. See also Rutledge, J., in *May Department Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376, 404.

"One of the chief reasons for freedom of the press is to insure freedom, on the part of individuals and associations of individuals at least, of political discussion of men and measures, in order that the electorate at the polls may express the genuine and informed will of the people. Brandeis, J., in *Whitney* v. *California*, 274 U. S. 357, 375. Hughes, C. J., in *Stromberg* v. *California*, 283 U. S. 359, 369. Individuals seldom impress their views upon the electorate without organization. They have a right to organize into parties, and even into what are called 'pressure groups', for the purpose of advancing causes in which

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tion (Colo. Stat. Ann., Michie, Supp. 1944) was outlawed in *American Federation of Labor* v. *Reilly*, 113 Colo. 90, 155 P.(2d) 145 (1944), on the ground that it was inseparable from the constitutional requirements of incorporation of labor unions. An Oregon prohibition forbidding political expenditures by labor unions (Ore. Code Ann., Secs. 102-909 (1940) was stricken as inseparable from other unconstitutional aspects of the statute in *American Federation of Labor* v. *Bain*, 165 Or. 183, 106 P (2d) 544 (1940).

A Texas prohibition upon political contributions by labor organizations (Tex. Stat. Rev. Civ., tit. 83, art. 5154a, Secs. 46-47 (Vernon, Supp. 1943)) was upheld in *American Federation of Labor* v. *Mann*, 188 S.W. (2d) 276. It should be noted, however, in connection with this decision that (1) the approved legislation dealt only with contributions and not with expenditures; (2) there was no extensive discussion on the merits, the statute being approved on the basis that the Federal Congress had passed similar legislation in the Smith Connally Act; (3) the Court was not confronted with a specific situation in which the operation of the statute had impinged upon the exercise of civil rights since the statute was challenged in a declaratory judgment proceeding.

The Indiana (Burns Ind. Stat. Ann. 1933, 1945 Supp. tit. 29, 5712) and Pennsylvania (Pa. Stat. Ann. Purdon 1941, tit. 25, sec. 3225) statutes ban political contributions by labor organizations and have never been construed.

they believe. They have a right to engage in printing and circulating their views, and in advocating their causes in public assemblies and over the radio. All this costs money, and if all use of money were to be denied them the result would be to abridge even to the vanishing point any effective freedom of speech, liberty of the press, and right of peaceable assembly.

"It remains to apply these principles to the proposed law under discussion. We do not doubt that labor unions, like individuals, may be curbed by corrupt practices acts and prevented from dumping immense sums of money into political campaigns. But under the proposed law the political activities of labor unions are not regulated or curbed but are substantially destroyed. Deprived of the right to pay any sum of money for the rental of a hall in which to hold a public rally or debate, or for printing or circulating pamphlets, or for advertising in newspapers, or for buying radio time, a union could not carry on any substantial and effective political activity. It could not get its message to the electorate. Its rights of freedom of the press and of peaceable assembly would be crippled . . ."

We submit that no other conclusion is possible here. The statutory prohibition upon expenditures creates a blackout of freedom of boundless dimension and the restraints imposed upon appellees in this case are inherent in the nature of the statute and are not an accidentally restrictive application. On its face, the instant statute is plainly condemned by the rule "that statutes which include prohibitions fairly within the prohibition of a free press are void." *Winters* v. *People of New York*, decided March 29, 1948, No. 3, this Term, Slip Opinion, p. 5. See also *Thornhill* v. *Alabama*, 318 U. S. 88, 97, and cases cited.

C. No valid justification exists for the prohibition and the statute does not meet the tests which must be applied where curbs upon civil rights are involved.

1. The invasion of civil rights may not be justified by resort to the conventional standards which are invoked to justify commercial regulation.

Ordinarily when regulatory legislation is challenged on the ground that it conflicts with the individual's interests (pecuniary or otherwise) in being free from regulation, its validity

can be established by a showing that a permissible legislative power is being reasonably exercised. Regulatory legislation must inevitably impinge on, and limit some individual's private interest in being free from regulation. But under our form of government the authority to make the judgment as to whose interests must yield is vested in the legislature. *Miller* v. *Schoene*, 276 U. S. 272. Indeed, a premise of our democratic system is that the individual is able to participate in the legislative decisions affecting his private interests through the ordinary political processes and the exercise of his right to be heard.

However, when the right to engage in political activity is curtailed the opportunity to influence and receive redress from adverse official action is cut off. It is therefore not the case that the right of freedom of expression is simply one of a multitude of private interests which the legislature may treat with as it sees fit. The right of free expression and the right to engage in political activity is a basic right because without it the means of obtaining redress against a bad law, the means of insuring peaceful change in a democratic society, is lost. Thus this Court, in *Schneider* v. *New Jersey*, 308 U. S. 147, 161, stated:

> "This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.
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> "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effects of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions".

See, also, *Thornhill* v. *Alabama*, 310 U. S. 88, 101, 102; *Bridges* v. *California*, 314 U. S. 252, 262, 263.

Because of this key relationship of civil rights to our political processes, this Court has recognized that Congress cannot be its own judge of the propriety of curtailing rights of political expression to achieve other ends and that the courts themselves must undertake a special responsibility for the protection of such rights. This is obviously imperative because, unless some non-political agency intervenes, interferences with the political mechanism may well perpetuate themselves. This thought was given expression by Mr. Justice Stone in *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152–153, in which he stated:

> "It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation. 'On restrictions upon the right to vote, see *Nixon* v. *Herndon*, 273 U. S. 536; *Nixon* v. *Condon*, 286 U. S. 73; on restraints upon the dissemination of information, see *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697, 713–714, 718–720, 722; *Grosjean* v. *American Press Co.*, 297 U. S. 233; *Lovell* v. *Griffin*, *supra* [303 U. S. 444]; on interferences with political organizations, see *Stromberg* v. *California*, *supra* [283 U. S. 359], 369; *Fiske* v. *Kansas*, 274 U. S. 380; *Whitney* v. *California*, 274 U. S. 357, 373–378; *Herndon* v. *Lowry*, 301 U. S. 242; and see Holmes, J., in *Gitlow* v. *New York*, 268 U. S. 652, 673; as to prohibition of peaceable assembly, see *De Jonge* v. *Oregon*, 299 U. S. 353, 365.
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> "Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious, *Pierce* v. *Society of Sisters*, 268 U. S. 510, or national, *Meyer* v. *Nebraska*, 262 U. S. 390; *Bartels* v. *Iowa*, 262 U. S. 404; *Farrington* v. *Tokushige*, 273 U. S. 484, or racial minorities, *Nixon* v. *Herndon*, *supra*; *Nixon* v. *Condon*, *supra*; whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

The teaching of this Court in a long series of cases is that legislation of the type here under consideration which invades

basic rights can avoid a clash with the Constitution only if three basic requirements are met:

(1) The statute must be narrowly drawn to deal with the precise evil which the legislature is seeking to curb. *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *DeJonge* v. *Oregon*, 299 U. S. 353.

(2) The conduct in the area of civil rights which is sought to be regulated must be specifically defined so as to leave the individual both secure in his right to engage in conduct excluded by the statute and free of the fear of discrimination in enforcement which a loosely drawn statute invites. *Cantwell* v. *Connecticut*, 310 U. S. 296; *Thornhill* v. *Alabama*, 310 U. S. 88; *Herndon* v. *Lowry*, 301 U. S. 242; *Stromberg* v. *California*, 283 U. S. 359.

(3) Such conduct must present such a clear and present danger to a substantial interest which the State has a right to safeguard as to justify the restraint. *Bridges* v. *California*, 314 U. S. 252, 261; *West Virginia State Board* v. *Barnette*, 319 U. S. 624; *Thomas* v. *Collins*, 323 U. S. 516, 527; *Herndon* v. *Lowry*, 301 U. S. 242, 256; *Thornhill* v. *Alabama*, 310 U. S. 88, 105; *Hartzel* v. *United States*, 322 U. S. 680, 687; *Pennekamp* v. *Florida*, 328 U. S. 331, 352–353.

The present case, particularly because it directly involves a prohibition in the field of political rights, requires that the tests above delineated be fully met if the statute is to survive the Constitution. Nor does *United Public Workers* v. *Mitchell*, 330 U. S. 75, hold to the contrary. In distinguishing this case, heavily relied upon by the Government in the court below, that court stated (R. 18):

> "In support of its argument that congressional control over elections may be exercised in abridgment of rights protected by the First Amendment, the government points to the case of United Public Workers v. Mitchell, 330 U. S. 75. As I read that case the decision turned, not on the power of Congress to regulate elections, but on the right of the government to prescribe rules concerning the conduct of its own employees. cf. United States v. Wurzbach, 280 U. S. 398. The activities in which Mitchell had engaged and which resulted in his dismissal were, accepting office as a committeeman of a political party, and acting as paymaster for party workers. Such conduct can

hardly be said to be comparable to the printing and circulating of editorial opinions by a person or group of persons not connected with either the government or a political party. I am unable to perceive that the views expressed herein are in any way at variance with the holding in the Mitchell case, Moreover, the Mitchell case and all the other cases cited by the government dealing with congressional authority over elections extend only to the regulation of political activities. In no other statute except the one we are considering here have I found that Congress has prohibited absolutely all activities of any person or group at elections. The prohibition in this statute against expenditures by labor organizations in effect would prevent such organizations from doing any act in connection with an election, since they are composite entities and not individuals, and by their very nature can make no move which does not involve some expenditure."

We must emphasize that the present case peculiarly involves the order of rights the curtailment of which brings into play the special considerations outlined above. The Government in its brief signally fails to accord proper recognition to the peculiar burden which necessarily must be overcome to avoid a conflict with the First Amendment. The Government throughout its brief never wholly abandons the assumption (see, for example, Government Brief, pp. 55–57, 62–68), appropriate only to a justification of commercial regulatory legislation, that once the permissibility of the object of the regulation is shown little more is needed. More particularly, the Government has in effect assumed that Congress has a freer hand when dealing with political activity than with other types of subject matter when precisely the opposite is true.

But, solution to our problem is not advanced by a demonstration that the Government in the past has regulated other aspects of the electoral process, such as contributions to political campaigns by corporations. Nor is an impressive compliance with the appropriate test for justifying this legislation supplied by allusions to the British experience (see Government Brief, pp. 83–86). All that the Government's recital of the British experience demonstrates is that the activities of trade unions in connection with elections is an appropriate

subject of regulation. Indeed, insofar as any conclusions may be drawn from the British experience, as we will show in detail below, that experience demonstrates that outright prohibition, such as is involved here, is not appropriate.* We believe that this fundamental failure on the part of the Government to give due accord to the nature of the subject matter here involved has resulted in its attempt to find justification for this statute dealing with expenditures in statutes dealing with wholly different problems. This approach has led the Government, moreover, into ignoring the historic character of labor organizations as entities dedicated to political activity and to disregard the key significance of the majority rule principle in the American experience.

Most basically, the Government's failure to subject the statute to an appropriately stringent constitutional test has led it to disregard the fact that the rights of political expression here obliterated are the surest guarantee of the very electoral freedom which, it is claimed, the statute is designed to safeguard.

2. The statute may not be justified on the ground that it is required to preserve free elections; this claimed justification for the statute is the strongest argument against it.

The Government has sought to justify the statute on the ground that it removes the peril of corruption which comes into being when large sums of money are thrown into an election (Br. pp. 68–71). We submit that no clear and present danger exists that the exercise of appellees' right in this case to inform working people not to vote for a candidate creates a danger to our electoral process.

On the contrary, it is the suppression of the right of free expression in connection with elections which, it has been rec-

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*The same may be said with respect to the use made of the comments in the article by Overacker, *Labor's Political Contributions*, 54 Pol. Sc. Quart. 56 (1939). This writer makes it unmistakably clear that a total curb upon labor's political contributions would be undesirable. The writer also suggests that the same reasons for banning political contributions by corporations do not exist in the case of labor unions because of fundamental differences in the decision-making process.

ognized from the beginning of our legislative experience, has created the danger to the purity of the electoral process.[7]

In the Hearings before the House Committee on the Election of Presidents, March 12, 1906 (extensively discussed by the Government in its Brief at pp. 14 to 17), Bourke Cockran, one of the most active proponents of electoral reform legislation, made it clear that freedom of political expression was deemed indispensable to a sound electoral system. He thus testified in support of his proposed bills (at p. 40):

> "The spectacle of this country passing upon a question so intricate as that involved in 1896 . . . the information which the people obtain every four years about the working of their government in all its departments, as well as in the fundamental propositions involved in the legislation likely to affect their condition, is something that has never been witnessed on this earth before, and, to my mind, this great national quadrennial popular debate is the source from which all the meritorious legislation of this country has proceeded, and it is the chief bulwark of the Government under which we live.
>
> "Whatever else may happen, I don't want the vigor, efficiency, or scope of these Presidential discussions limited, impaired or endangered in the slightest degree. Whatever we may do to check corruption, I hope we will not tolerate any suggestion likely to result in diminishing the number of meetings at which citizens have been in the habit of discussing grave problems of government, of the volume of literature circulated for their information. At the very threshold of an attempt to prevent expenditures for corruption we should take precautions to maintain and even increase expenditures for enlightenment".[8]

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[7] See Clark, *Federal Regulation of Election Campaign Activity*, 6 Fed. Bar J. 1, 8 (1934).

[8] It is appropriate to point out in connection with the Government's citation of the background of the 1907, 1909 and 1925 corrupt practices measures that they reflected a social revolt by "plain people of small means" (Government Brief, p. 15) of considerable proportions. These measures must be read in their social and political context of protest against the subversion of the electoral process by American business monopoly. See, *Hearings* of the 1906 House Committee, *supra*; Tarbell, *The Nationalizing of Business* (1936), p. 257; Slosson, *The Great Crusade and After* (1931), p. 94; Adams, *The Incredible Era* (1939), pp. 128–129; Loth, *Public Plunder* (1938), pp. 242–246; Bassett, *A Short History of the United States* (1924), pp. 711, 723.

This Court has made it clear that the very purpose of protecting civil rights is to insure the integrity of our democratic scheme and the purity of the electoral process itself.* Because a suppression of civil rights impairs political freedom and invites corruption, this Court has consistently safeguarded free expression. See, *supra*, pp. 25–26.

In *Whitney* v. *California*, 274 U. S. 357, Justice Brandeis expressed the basic philosophy which has moved this Court in civil rights matters. Justice Brandeis there stated (at p. 375):

> "Those who won our independence . . . recognized the risks to which all human institutions are subject. But they knew *that order cannot be secured merely through fear of punishment for its infraction;* that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; *that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones.*" (Italics supplied.)

In *Stromberg* v. *California*, 283 U. S. 359, 369, Chief Justice Hughes held:

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive

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We submit that the statutes, when considered in their proper environment, do not support the measure under consideration but seem rather to warn of the dangers to a democratic society which are implicit in a denial to labor organizations of the right of political activity. It should also be pointed out that a preoccupation only with form rather than with substance could lead to the conclusion that the statutory response to the Armstrong Committee revelations with respect to use of policy-holders' funds for political activities serves as a precedent for barring the use of members' dues by labor organizations for political activities.

*And it was viewed in that very light from the beginnings of our form of government. Madison, in his report on the Virginia Resolutions directed against the Alien and Sedition laws of 1908 stated:

"Of this act it is affirmed—1. That it exercises, in like manner, a power not delegated by the Constitution; 2. That the power, on the contrary, is expressly and positively forbidden by one of the amendments to the Constitution; 3. That this is a power which, more than any other, ought to produce universal alarm, because it is levelled against that right of freely examining public character and measures, and of freely communicating thereon, which has ever been justly deemed the only effectual guardian of every other right." IV Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (1836), 561.

to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."

In *DeJonge* v. *Oregon*, 299 U. S. 353, the Court adverted to the "imperative" need "to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government".

In cases involving freedom of the press, the Court has repeatedly noted the overriding political significance in our policy of protecting civil rights. See, for example, *Near* v. *Minnesota*, *supra* (at p. 719), and *Grosjean* v. *American Press Co., Inc.*, *supra*.

The central theme which unifies and explains the cases in which civil rights are protected is that the political majority may not immunize itself from political criticism which its actions occasion. Yet who can deny that in this very case we are confronted with an attempt by Congress to immunize itself from the political criticism resulting from the passage of the Labor-Management Relations Act, 1947? In short, if we protect civil rights in order to make available to our people the mechanism for changing a bad law and to keep alive in the minority the conviction that the current majority may be unseated through the operation of the political process, then this is obviously a case which calls for the prompt and unhesitating invalidation of Section 304 by this Court."

" The injury which has been done by Section 304 has a double aspect. In the first place, the law gags the political voice of that group most directly and most adversely affected by the Labor-Management Relations Act, 1947. In the second place, it accomplishes this result in a discriminatory fashion. This is so because other groups such as anti-labor unincorporated associations are free of the restraints which are imposed upon labor organizations. Congress has thus on the one hand silenced criticism of those groups who suffered the most profound injury as the result of passage of the Labor-Management Relations Act, 1947, but abated in no respect the right of those groups which were instrumental in passing the law and who have dedicated themselves to maintaining it. The constitutional implications of this substitution of a monopoly for free trade in ideas are discussed *infra*.

Section 304 does not preserve the purity of the electoral process. It perverts the electoral process. Thus, in the instant case, far from averting a clear and present danger the statutory suppression will create a danger that those who sponsored and approved Section 304 may perpetuate themselves in office because the political voice of the millions adversely affected by the law has been effectively stifled.

The Government contends (Brief, pp. 68–71) that this political sterilization of appellees and those represented by appellees is necessary in order to eliminate the influence of great aggregate wealth in connection with elections. But this is not a law which imposes a ceiling upon expenditures. As a matter of fact, the Government concedes (Brief, pp. 58, 60), that the workers represented by appellees could form a new organization and legally "subvert" the electoral process through their newly aggregated wealth.

If the statute is to be justified it cannot be justified on an "aggregate wealth" theory. This is so not only because Congress has failed, as the Constitution requires it to do (see cases cited *supra*, p. 27), to draw the line at the point at which the legitimate exercise of rights ends and the claimed subversion of elections through the aggregate wealth of trade union members begins, but also because aggregate wealth expended by other unincorporated associations in connection with an election is not subject to the statute. The right to make such expenditures is denied only to those unincorporated associations which are labor organizations.

We now turn to a consideration of this aspect of the Government's case.

3. The participation by labor organizations in political life is an important and legitimate means for the effective exercise of political rights by working men and women.

The statute, when examined in the context of the Labor-Management Relations Act, 1947, rests upon the view that while the collective activity of working people in labor organizations is desirable and important in connection with economic activity, it is to be discouraged in the political realm. The law seeks to inject into the political process the same notion of

individual rights which national policy has consistently rejected in connection with collective bargaining. This attempt to restore to working people the disadvantages which anteceded the recognition of trade unions should be recognized for what it is—namely, an attempt to destroy or impoverish a right by outlawing the means for its effective exercise.

As this Court well knows, in our society where few working people are in a position to make large expenditures, if political freedom is to be effectively exercised, individuals must necessarily express their views through groups. Moreover, the Constitution itself by protecting the right of freedom of assembly recognizes the importance of preserving group rights. See *Thomas* v. *Collins, supra* (at p. 547).

Long ago this Court stated, in *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418:

> "Society itself is an organization, and does not object to organization for social, religious, business and all legal purposes. The law, therefore, recognizes the right of working men to unite and invite others to join their ranks, thereby making available the strength, influence, and power that come from such association."

In 1921, in *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209, the Court said of labor organizations:

> "They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and his family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer."

In 1932 in the Norris-LaGuardia Act, Section 102, the broad right of workers to associate was again affirmatively made an object of federal protection.

The National Labor Relations Act in 1935 expressly gave protection to "the exercise by workers of full freedom of as-

sociation". In 1937 the Court, in upholding the validity of the National Labor Relations Act, held in *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33, 34:

> "That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. . . . Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it."

See also *Texas and New Orleans Railroad Co.* v. *Railway and Steamship Clerks*, 281 U. S. 548; *Hague* v. *C.I.O.*, 307 U. S. 496; *Thomas* v. *Collins*, *supra*.

What we have been saying up to this point amounts to this: The protection of workers in their right to act collectively for the purpose of safeguarding their legitimate interests has a long genealogy of substance. In Section 304 we encounter for the first time in a generation an attempt by Congress to reverse this historic trend and to prohibit collective action on the part of working people for lawful purposes.

Such a reversal of national policy can only be justified on the ground that political activity is something alien or hostile to the normal concerns of trade unions. But this is a premise which is so false as to be ludicrous. As one writer has put it:

> "*Labor has always been in politics.*
>
> "It is difficult to conceive of any functioning labor organization which does not take part in politics. For the leaders of labor, politics was, and is, the other side of the trade-union coin.
>
> "Every labor organization is, in principle, dedicated to the protection of the rights of its members and to the improvement of their conditions. If those objectives are to be attained, labor must ask for legislation of many kinds. Whether a union succeeds or fails in getting its demands depends entirely upon whether the legislators are for labor or against labor. In turn, very naturally, labor supports those legislators friendly to labor, and repudiates those who are anti-labor.
>
> "It has always been so.
>
> "As far back as 1886, Samuel Gompers said: 'We regard with pleasure the recent political action of organized

workingmen of this country, and by which they have demonstrated that they are determined to exhibit their political power.'" Joseph Gaer, *"The First Round"*, New York (1944), p. 49.

In testifying before the House Committee investigating campaign expenditures, Sidney Hillman, then chairman of the CIO Political Action Committee, pointed out:

> "Organizations of men and women, united by a common interest, for the advancement of their own and the general welfare through political action, are as old as our nation. The most casual study of our history discloses that organizations of workers, like organizations of farmers and business, have long been concerned with and have actively participated in politics. The activity of such groups in shaping the course of their government is essential to the functioning of our democracy.
>
> "Experience early taught organized labor that it cannot discharge its obligation to protect and promote the welfare of its members as workers and citizens through the processes of collective bargaining alone. The struggles of labor on the economic front have always been interwoven with its efforts in the political field for social legislation to protect the immediate economic interests of its members, as well as in such broader fields as education, public health, taxation and business regulation.
>
> "Labor's participation in political activity has grown with the growth of the organized labor movement itself. Moreover, our national experience since 1929 has served to teach labor and all Americans that in this complex modern industrial society of ours, the national well-being is increasingly dependent upon the wise and progressive exercise of the powers of government." *Op. cit. supra*, p. 237.[21]

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[21] The best available account of the forces which have stimulated labor's political activities is Taft, *Labor's Changing Political Line*, 43 Journal of Pol. Ec. 634 (1937).

The following texts document the historic role of labor in American political life:

Beard, *The American Labor Movement, A Short History* (1935), pp. 33–46, 54–61, 80–85, 103–112, 165–171; Bimba, *The History of the American Working Class* (1927), pp. 84–89, 204–208, 323–330; Carroll, *Labor and Politics* (1923), pp. 27–54, 80–138; Childs, *Labor and Capital in National Politics* (1930); Commons and Associates, *History of Labor in the United States*, vols. I and II (1918), Vol. I, pp. 169–335, 369, 454–471, 522, 535, 548–559; Vol. II, pp. 85–109, 124–130, 138–146, 153–155, 168–171, 240–251, 324, 341–342, 351–353, 461–470, 488–493; Daugherty, *Labor*

With the increased participation of government in our economic life, workers are forced into politics through their unions in order to preserve their economic security and standard of living. If an individual is helpless in dealing with his employer, then how can it be said that he is more able to deal with the powerful employer-dominated political interests which, unless restrained, can decisively fix or alter the terms and conditions under which he must live? In sheer self-protection he must associate with others in order to preserve those political values which enforce and promote his economic interests. He must organize politically in order to defend the gains achieved through his economic strength against political attack. He must organize politically in order to meet the organized political attack of other interests in our national life. And he must organize politically in order to safeguard and promote his right to form and join unions and his right to bargain collectively and to strike."

Fundamentally the premise of those who have enacted Section 304 is that labor, in order to achieve its goals, is confined to its economic power. The sponsors of Section 304 apparently believe that the techniques of economic warfare should be encouraged and that labor organizations' time-honored resort to political action should be made a crime. Surely, an objective of legislative policy which seeks the encouragement of strikes in a highly organized economy, in preference to orderly

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Problems in American Industry (1933), pp. 622–629; Foner, *Labor Movement in the United States* (1947), pp. 104–105, 130–134, 140, 149–166, 210–217, 245–248, 262–263, 334–336, 357–359, 372–373, 423–429, 475; Harris, *American Labor* (1938), pp. 33–55, 65–69; Hoxie, *Trade Unionism in the United States* (1917), pp. 78–102; Lorwin, *The American Federation of Labor* (1933), pp. 88–93, 123–126, 221–226, 351, 397–425; Millis and Montgomery, *Organized Labor* (1945), pp. 7, 10, 27, 29–31, 34, 42n, 51; 52n, 54–55, 57n, 62, 67, 71, 81, 91, 108–111, 118, 123–129, 141, 143, 149, 178, 181–188, 232–238, 303–305, 311, 313, 317–320, 348–349, 600, 669, 829, 890; Perlman, *A History of Trade Unionism in the United States* (1929), pp. 146–160, 285–294; Perlman and Taft, *History of Labor in the United States, 1896–1932* (1935), pp. 150–166, 525–537; Schlesinger, *The Age of Jackson* (1945), pp. 132–158, 180–185; Walsh, *C. I. O., Industrial Unionism in Action* (1937), pp. 248–271; Ware, *The Labor Movement in the United States, 1860–1895* (1929), pp. 350–370; Ware, *The Industrial Worker, 1840–1860* (1924) pp. 154–162.

"One of the most powerful factors which brought labor into political life was the evil of "Government by Injunction." Lorwin, *The American Federation of Labor.* (1933), pp. 89, 90.

political action, is not such a consideration as to outweigh the sweeping prohibition upon civil rights which has been written into Section 304.

The attempt of the Government to justify Section 304 by resort to a theory of "pork chops," of pure and simple "business unionism" is wholly at odds with the realities of trade unionism. Moreover, the Government itself has, in construing the Legislative Reorganization Act of 1946 (Ch. 753, Pub. 601, 79th Cong. 2nd Sess.) adopted a more realistic view of the nature and functioning of labor organizations. Section 307 of that Act subjects to the provisions of Title III (Federal Regulation of Lobbying Act) any organization "the principal purpose of which is to aid, in the accomplishment of any of the following purposes:

"(a) The passage or defeat of any legislation by the Congress of the United States.

"(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States."

Despite the fact that this legislation is addressed to organizations having the above as their "principal" purpose and despite the fact that the legislative history of the measure states that, "it does not apply to organizations formed for other purposes whose efforts to influence legislation are merely incidental to the purposes for which formed",[18] the Government has construed it to apply to appellee Congress of Industrial Organizations. See Statement by Irving R. Kaufman, Special Assistant to the Attorney General, to Senate Committee on Expenditures in the Executive Departments, March 17, 1948.

If a labor organization is deemed to have as a "principal" purpose legislative activity, how can the instant prohibition be justified, as the Government contends, upon the theory that political activity is foreign to its fundamental purposes?

4. If appellees have a constitutional right to engage in legislative and political activity, they cannot be deprived of that right because that activity is in connection with an election.

It cannot be denied that, not as an incidental or casual matter but in fulfillment of their basic nature and purpose, labor

[18] S. Rep. No. 400, 79th Cong. 2d. Sess., p. 27.

organizations engage, and have always engaged, in legislative and political activities. And certainly no one could challenge the right of a labor organization to engage in such activities where they happen to be unrelated to a federal election. See, for example, *Hague* v. *CIO, supra.* What are the constitutional consequences which flow from the fact that otherwise protected activity takes place under circumstances to which the label may be attached, "in connection with any federal election"?

We submit that the process of engaging in and providing support for a legislative program is so fluid that a constitutional line may not be effectively drawn between such activity and political activity "in connection with any federal election".[*] This can be clearly seen even by a cursory glance at a typical pattern of union legislative and political activity.

The political activity of a labor organization is initiated by the adoption at its convention of a program covering basic legislative and economic objectives. This program is voted upon by the duly elected delegates to the convention.

Since conventions occur at intervals of no less than a year, the interim determination of policy is made by an executive board of the organization, empowered under its constitution to fix policy. All legislative and political activity which is undertaken by the labor organization is undertaken pursuant to the democratically arrived at decisions of the convention or the executive board.

After the establishment of policy on such matters, for example, as price control, health insurance, taxation, civil rights, anti-labor legislation, and the like, members of both the parent body and the local union are charged with the task of acquainting both members and the general public with the union's position on these issues.

Where no election contest is currently in the offing, the process of legislative and political activity consists mainly of education through leaflets, radio addresses, articles in the labor press, and the like. Moreover, legislative representatives

[*] Moreover, the phrase "in connection with any federal election" is so vague and indefinite as to constitute a previous general restraint upon the exercise by labor organizations of civil rights in connection with legislative and political activities not literally reached by it.

of the various unions, registered under the Federal Regulation of Lobbying Act, call the union's program to the attention of members of Congress.

As members of the community become educated to the issues and to the point of view of the labor organization, they demand that candidates for public office and political conventions be nominated who support the program of the organization. To insure the achievement to this end, local union political action committees everywhere systematically take part in primaries and in the workings of conventions which establish a program and select candidates for federal office."[18]

There is no fixed point at which it can accurately be said that activity is or is not "in connection with any federal election". A political process naturally has as its objective and culmination an election, but the relationship between the election (and its precedent steps, filing, nomination, and campaigning) on the one hand, and the process of formulating issues and educating the members of the community to the nature of the issues, on the other, is a highly fluid one.

The formulation of issues, the emergence of a platform, the selection of a candidate, the conduct of the election, are not parts of a formal cycle with marked differences. All of these activities have a dynamic and inseparable interrelationship with the result that if it is criminal to engage in one the right to engage in all the others is likewise blighted.

The expenditure of funds on behalf of a candidate or in connection with an election is not a different order of activity from that which preceded the emergence of the candidate upon the scene or the approach of the election. In the process of a political discussion and legislative activity in which unions engage, a point is reached at which particular individuals who are candidates for office become identified with the platform and the program which the union supports. Support of the candidate is merely a more effective, a more goal-conscious support of the program.

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[18] Of course this is only as it should be. For, historically, the direct primary was instituted in order that the general public could participate in the selection of candidates and in the formation of program. See Merriam and Gosnell, *The American Party System* (1929), pp. 245, 246. A similar purpose produced the Seventeenth Amendment providing for the popular election of Senators.

The basic point is that the entire process from the education of the community to the issues involved to participation in the campaign is forwarded by the presentation of ideas in the classic constitutional sense.

The expenditures which were made in this case are typical of expenditures which are made in support of candidates for federal office whose political philosophy conforms to the aspirations and programs of the labor organizations in the community. The publication and the activities which such expenditures underwrite fall indisputably within the area of free speech and free press. No less than the educational and preelection program itself, an election campaign is "a free trade in ideas" where the "best test of truth is the power of thought to get itself accepted in the competition of the market". *Abrams* v. *U. S.*, 250 U. S. 616, 630.

Legislative and political activity on the part of trade unions is not a compendium of abstract principles or a wishful beckoning to a better life. It is a program of action. It is a program which presents to the people of the community vital, concrete choices. To suggest that this program may be forwarded and constitutionally protected as long as education is promoted but not when candidates are to be elected, would be to allow the right of free speech to function in a vacuum. Free speech would not be the precious right it is if the constitutional shield were withdrawn from it at the point where it confronts men with a practical choice in the realm of conduct. Cf. *Abrams* v. *U. S.*, *supra*.

Ideas do not lose constitutional standing because they invite to a course of action. And the purpose of the First Amendment is not simply to protect the expression of esoteric or trivial views but is primarily to enable all persons to be heard on the immediate, pressing, and controversial issues of public importance vital to all.

> "No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression." *Bridges* v. *California*, *supra* (at p. 269).

In *West Virginia* v. *Barnette, supra* (at p. 642), the Court said:

> "But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."

In *Thomas* v. *Collins, supra,* this Court invalidated a Texas statute requiring paid labor union organizers to register with the Secretary of State and secure an organizer's card before soliciting members within the state. A national labor leader addressed a mass meeting and in the course of his address invited one person specifically and all his hearers generally to join the union. The problem which faced the Court was whether a constitutional line could validly be drawn between the speech and the solicitation, just as the Court in this case is faced with the problem of whether a constitutional line may validly be drawn between protected activity not in connection with an election and prohibited activity in connection with an election.

The Court pointed out first that the distinction upon which the state rested in that case between solicitation and free speech was a distinction without a constitutional basis, and, second, that it was a distinction which imperiled the right of free discussion. Thus, Justice Rutledge stated for the Court (at p. 535):

> "Workingmen do not lack capacity for making rational connections. They would understand, or some would, that the president of U.A.W. and vice president of C.I.O., addressing an organization meeting, was not urging merely a philosophic attachment to abstract principles of unionism, disconnected from the business immediately at hand. The feat would be incredible for a national leader, addressing such a meeting, lauding unions and their principles, urging adherence to union philosophy, not also and thereby to suggest attachment to the union by becoming a member.
>
> "Furthermore, whether words intended and designed to fall short of invitation would miss that mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some

as a invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

"Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. He must take care in every word to create no impression that he means, in advocating unionism's most central principle, namely, that workingmen should unite for collective bargaining, to urge those present to do so. The vice is not merely that invitation, in the circumstances shown here, is speech. It is also that its prohibition forbids or restrains discussion which is not or may not be invitation. The sharp line cannot be drawn surely or securely. The effort to observe it could not be free speech, free press, or free assembly, in any sense of free advocacy of principle or cause. The restriction's effect, as applied, in a very practical sense was to prohibit Thomas not only to solicit members and memberships, but also to speak in advocacy of the cause of trade unionism in Texas, without having first procured the card."

The Court insisted that speech cannot be gagged because it induces to action, and stated (at pp. 536–37):

"When legislation or its application can confine labor leaders on such occasions to innocuous and abstract discussion of the virtues of trade unions and to becloud even this with doubt, uncertainty and the risk of penalty, freedom of speech for them will be at an end. A restriction so destructive of the right of public discussion, without greater or more imminent danger to the public interest than existed in this case, is incompatible with the freedoms secured by the First Amendment.

"We do not mean to say there is not, in many circumstances, a difference between urging a course of action and merely giving and acquiring information. On the other hand, history has not been without periods when the search for knowledge alone was banned. Of this we may assume the men who wrote the Bill of Rights were aware. But the protection they sought was not solely for persons in intellectual pursuits. It extends to more than

abstract discussion, unrelated to action. The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts. Cf. *Abrams* v. *U. S.*, 250 U. S. 616, 624, and *Gitlow* v. *New York*, 268 U. S. 652, 672, dissenting opinions of Mr. Justice Holmes. Indeed, the whole history of the problem shows it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that protections are given."

In the context of political and legislative activity, the distinction between education and advocacy on the one hand and elections on the other is not one of kind and indeed scarely one of degree. It is assuredly a distinction without constitutional dimension. If the right to speak in behalf of a legislative program is to be freely exercised, it must include the right to endorse a candidate who embraces that program. Fair exercise of the former right necessarily involves the latter. Every civil right functions constitutionally through forms appropriate to its purpose and history. Cf. *Gompers* v. *U. S.*, 233 U. S. 604, 610.

To suggest that a constitutional right to engage in political activity is lost at the point when the activity enters the area of the election is to disfigure the "essential attributes of that liberty". *Near* v. *Minnesota, supra.*

We turn now to a consideration of the contention that the right is lost at that point because its exercise is financed by the dues of a "coerced" minority.

5. The use of union dues by appellees to finance the publication could not create substantive evils of sufficient weight to warrant the curtailment of liberty of expression.

One justification which has been suggested for the restriction imposed herein is that the minority members of trade unions are "coerced" into the financial support of political objectives with which they are not in sympathy.

If, as cannot be denied, political activity is directed toward interests in which trade unions are legitimately involved, no basis exists for atomizing the collective strength of the union in the manner achieved by Section 304. If the minority members may be required to acquiesce in the expenditure of their dues for the purpose of sponsoring and supporting a legisla-

tive and political program affecting the interests of the union, how can it be said that at the point where such activity may be most effective, namely, when it is directed to the support of a candidate identified with that program, that the interests of the minority then acquire a special character which the state may intervene to preserve even at the cost of destroying the exercise of political liberties?

The theory that labor organizations depart from their legitimate objectives when they engage in political activity and that therefore the minority needs legislative protection when this occurs ignores not only the nature and purpose of labor organizations, referred to in the previous sections of this brief, but their basic law, structure and method of operation as well.

The constitution of appellee Congress of Industrial Organizations expressly enumerates as a principal purpose,

> "To secure legislation safeguarding the economic security and social welfare of the workers of America, to protect and extend our democratic institutions and civil rights and liberties, and thus to perpetuate the cherished traditions of our democracy." *Constitution of the Congress of Industrial Organizations*, Article II, Fourth.

How can it be said, in view of the language of this provision, that the members of appellee Congress of Industrial Organizations are being "coerced" by political activity in a manner which is inconsistent with their membership?

It should be borne in mind that the statement of legislative purpose contained in its constitution has been repeatedly reaffirmed in resolutions democratically adopted by conventions called by appellee Congress of Industrial Organizations. These resolutions have unequivocally dedicated appellee to participation in political activities. See, for example, *Proceedings* of the Sixth (p. 239), Seventh (p. 209), Eighth (p. 291) and Ninth (pp. 108, 151) Constitutional Conventions of the Congress of Industrial Organizations.

If, as we have demonstrated, labor organizations have historically functioned in the political arena and if, as is clear from appellee's constitution and its convention proceedings, and the constitutions and by-laws of other labor organizations which are set out in Appendix II, it is a basic constitutional

aim of labor organizations to engage in political activity, then the Government's case reduces itself to a claim that the majority rule principle should be arbitrarily abrogated where political activity is involved.

But the activities in which appellee Congress of Industrial Organizations engages are group activities which necessarily are based upon the majority rule principle.[11] When a worker joins a union he seeks the advantages that come from group strength. In doing so, he commits himself to a program of group action which may conceivably produce results contrary to his personal wishes in a particular case. But this does not mean, as the Government suggests, that he is "coerced".

For example, under American labor jurisprudence it has never been contended that once a seniority agreement has been negotiated in the interests of the group a particular employee is free to repudiate it on the ground that he was "coerced" into accepting it. If the employee involved suffers a disadvantage under the agreement in terms of his place on the seniority ladder, that injury is regarded as compensated for by the protection afforded by the seniority clause to the entire group and by the advantages accruing to the individual through his association with the group. Cf. *Steele* v. *Louisville & Nashville R. R.*, 323 U. S. 192.

No meaningful distinction may be drawn between the rights of the individual in the economic sphere and in the political sphere. The point is that by becoming a member of the group the individual subjects himself to the group decisions in the interest of a more comprehensive freedom with respect to all the legitimate objectives of the group which such association brings him. This principle was recognized by the court below (R. 17):

> "It is contended that the evil sought to be remedied by this legislation consists in the use of money, paid into the treasury of a labor organization in the form of dues, for the purpose of publishing opinions and arguments which may not be in accord with the views of a minority of the organization. Such use of money, says the government,

[11] For a discussion of the role of this principle in American labor relations, see Weyand, *Majority Rule in Collective Bargaining*, 45 Col. Law Rev. 556 (1945).

is fraught with implications of oppression and coercion of minorities of such import that Congress could act to prevent it, even to the extent of abridging the basic freedoms. It is doubtful whether such a contention would avail, even though the statute had been framed to cover only such cases. Inherent in the idea of collective activity is the principle that it shall be exercised on behalf of the organization pursuant to the will of the majority of its membership. This principle is recognized in the very statute of which the Labor-Management Relations Act containing this Section 304 is an amendment."

In *DeMille* v. *American Federation of Radio Artists*, 31 Cal. (2d) 137, certiorari denied, April 19, 1948, No. 679, this Term, the California Supreme Court sitting in banc unanimously held that a union may engage in political activity and spend its funds for such purpose whenever such activity is for a lawful labor objective.

The court pointed out that mere disagreement with the majority does not absolve the dissenting minority from compliance with action taken in accordance with the union's constitution and by-laws. Moreover, the court pointed out that majority rule is imperative in this area if unions are to function effectively:

". . . the principles involved and applicable to the facts are not new. Here novelty is present only in the assertion that the proper use of association funds may be avoided by a member who is committed to a minority view. Other organizations, such as Medical Associations, Bar Associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference."

The plaintiff in the *DeMille* case relied heavily upon the *Amalgamated Society of Railway Servants* v. *Osborne*, A. C. 87. The court's opinion establishes that that case in no way justifies the restraints here involved:

"Cases relied on by the plaintiff are consistent with the foregoing conclusion. He quotes the following *Amalga-*

mated Society of Railway Servants v. *Osborne*, 1 British Ruling Cases 56, at 94 (1909, 1 Law Re. Ch. Div. 163, at 195):

> 'It is not enough to say that a man's vote has not been influenced. It is also necessary for his freedom that he shall not have been coerced into supporting by money or otherwise the candidate whom he wishes to oppose. It is really ludicrous to suggest that his choice is confined to voting on the day of the poll . . . Unless freedom of choice is to be reduced to an absurdity, it must extend to the whole conduct of the elector towards the candidate from beginning to end.'

> "In that case the court condemned as illegal and unauthorized under English Trade Union Acts an objective of a union to provide a fund for the election and maintenance of parliamentary representation, candidates for which should 'sign and accept the conditions of the Labour Party and be subject to their whip'. A double aspect of the case was the inhibition upon parliamentary conduct of an elected representative, and the coercion by demands for political and financial support at the expense of expulsion upon members of the trade union who might be opposed to the Labour Party candidate. The general language in the various opinions in that report must be deemed to have been confined to the point at issue, that is, the validity of the coercion upon members for their political and financial support of candidates for election who would be favorable to labor, an object clearly opposed to the public interest and which legislatures in this country have sought to control by the enactment of corrupt practices acts."

Of particular importance here is the observation of the court contained in the *DeMille* case with respect to the use of union funds to pay for a newspaper containing an article in support of a labor-endorsed candidate. The court stated:

> "An inference may not be drawn . . . to the effect that in England the courts would condemn the use of union funds derived from an assessment for the purpose of conducting educational programs and public debate on legislative matters touching labor interests. In fact, in *Linaker* v. *Pilcher* (1901) 70 L.J., K.B. 396, 87 L.T. 421, it was held that financial support of a newspaper was within the

lawful objects of the union. The opinion states at page 426 of 87 Law Times Reports that the enterprise was within the lawful objects of the society to improve the condition and protect the interests of its members because the newspaper was published entirely in the interests of the members of the trade union and to protect their interests." [*]

The entire contention of the Government that the statute may be justified on the ground of the protection of the rights of the minority is completely answered by the simple fact that Congress did not attempt to legislate with reference to this claimed evil. This is not a statute which requires the assent of union members before funds may be expended for political purposes. If every member of appellee Congress of Industrial Organizations had given his written consent to the publication involved herein, that fact would provide no defense to the indictment.

As the court below pointed out (R. 17):

"However, the provision prohibiting expenditures by labor organizations in connection with elections does not purport to affect only cases in which a minority of the membership, however small or great, is opposed to the expenditure. It covers all such expenditures in connec-

[*] Even though the *Osborne* decision was confined to the narrow ruling that compulsory levies on union members for the purpose of making contributions to Labor M.P.'s were *ultra vires*, it produced a wave of strikes. Three years later in 1913 the restriction of the *Osborne* case was lifted to the extent of permitting political contributions subject to majority decision by rank and file members. Those members who did not wish to contribute could under this dispensation by affirmative action "contract out" of a political assessment.

Subsequent to the 1926 General Strike, in 1927, the Conservatives passed new legislation which amended the requirements so that members were required affirmatively to "contract in" by signifying a positive desire to contribute even though a majority of the members had approved the contribution.

This new provision was widely attacked as an unwarranted crippling by the party in power of the very means of existence of the minority group. The reaction was a strengthening of the Labor Party which ultimately came to power in 1945 and thereafter repealed the limitations of the 1927 Act.

It should be made absolutely clear that although the 1927 law was harsh, at no time were union newspapers affected, a motion to include them in legislation having been rejected by the House of Commons as an undue limitation on political rights. See Rothschild, *Government Regulation of Trade Unions in Great Britain*, II, 38 Col. Law Rev. 1335, 1353, *et seq.* (1938).

> tion with federal elections. We cannot presume that substantial differences of opinion or desire exist in labor organizations with reference to matters concerning labor's welfare. Such organizations do not follow political party lines as such, and to say that doubtless there are in the membership large numbers of voters of differing political party affiliation is not to say that all these may not be unitedly in favor of or opposed to candidates who respectively favor or oppose the type of legislation which laboring men and women in general believe to be in their best interest."

No guide star is more firmly fixed in the constitutional firmament than that which requires a legislature to deal precisely with the situation constituting the abuse and thus to avoid a conflict with civil rights.

In *Lovell* v. *Griffin, supra* (p. 451), this Court stated that the ordinance there in question

> "is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of streets. The ordinance prohibits the distribution of literature of any kind, at any time, at any place, and in any manner without a permit from the city manager.
>
> "We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press."

In *DeJonge* v. *Oregon, supra* (at pp. 364, 365), the Court struck down a criminal syndicalism law, saying,

> "The people through their Legislatures may protect themselves against . . . abuse [of free speech or press]. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed."

In *Schneider* v. *New Jersey, supra* (at p. 162), the Court said:

> "this constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods to prevent littering. Amongst these is punishment of those who actually throw papers on the streets."

In *Thornhill* v. *Alabama*, *supra* (at p. 105), the Court struck down a broadly drawn anti-picketing ordinance and pointed out that the statute which is the source of the restriction on free speech must be "narrowly drawn to cover the precise situation giving rise to the danger". See also *Near* v. *Minnesota*, *supra*, and *Murdock* v. *Commonwealth of Pennsylvania*, 319 U. S. 105, 116.

Of compelling significance is the decision of the Court in *Martin* v. *City of Struthers, Ohio*, *supra*. In that case the municipality passed an ordinance outlawing the distribution of literature when the person distributing it rang a doorbell or otherwise summoned the inmate of the residence to the door for the purpose of receiving such literature. Instead of meeting the problem by permitting such individual to decide for himself whether he would receive the literature, the municipality flatly outlawed the entire practice of ringing doorbells as a means of distributing literature. The Court pointed out (at p. 147), that an appropriate regulation would leave the decision as to whether distributors of literature might lawfully call at a home where it belongs, namely, with the homeowner or resident himself. The municipality, the Court held, could not substitute its judgment for the judgment of the individual as to whether such literature should be received. In the same way Congress here has substituted its judgment for the judgment of the union member as to whether his dues should be expended for political purposes.

It is thus clear that even if Congress could constitutionally protect the rights of the minority, as the Government contends, it certainly cannot go beyond that point, as it has here, and impose an outright prohibition upon all political activity, in connection with a federal election.

D. The vagueness of the statute condemns it as unconstitutional.

It is submitted that the phrase "expenditure in connection with any election . . . or in connection with any primary election or political convention or caucus" is so vague and indefinite as to conflict with the First as well as the Fifth and Sixth Amendments.

As this Court has recently pointed out in *Winters* v. *New York, supra*, Slip Opinion, pp. 2–3.:

> "The appellant contends that the subsection violates the right of free speech and press because it is vague and indefinite. It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. *Stromberg* v. *California*, 283 U. S. 359, 369; *Herndon* v. *Lowry*, 301 U. S. 242, 258. A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expressions, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech or press."

Where a statute involving civil rights is uncertain as to its reach, far more harm is done than in the case of an ordinary criminal statute where it matters less whether the activity on the penumbra of the statute is discouraged or not. Where, as here, the outer limits of the statute are so vague as to be virtually unascertainable, two evils result. One, an effective previous general restraint is imposed upon the exercise of rights which may actually be outside of the purview of the statute. Two, the very vagueness of the statute creates an opportunity for discrimination in its enforcement which is inconsistent with constitutional protections.

In *Stromberg* v. *California, supra* (at p. 369), the Court stated:

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guarantee of liberty contained in the Fourteenth Amendment."

The vagueness of Section 304 is of such a character as to accomplish precisely that which was condemned by the Court in the *Stromberg* case, namely, "to permit the punishment of

the fair use" "of the opportunity for free political discussion". See, also, *Herndon* v. *Lowry*, 301 U. S. 242; *Near* v. *Minnesota, supra* (at p. 712); *Thornhill* v. *State of Alabama, supra* (at pp. 100–101); *Cantwell* v. *Connecticut, supra*.

Clearly in point, likewise, is the language already quoted from *Thomas* v. *Collins, supra*, in which the Court pointed out that the vagueness of the statute left no security for the exercise of the rights which the statute did not purport to reach."

This Court has frequently observed that the vagueness in a statute infringing civil rights lays the basis for discriminatory and unfair application. Moreover, such discrimination is frequently directed against minorities who more than other groups need the shield of constitutional protections.

Thus in *Jones* v. *City of Opelika*, 316 U. S. 584, 612 (dissenting opinion later made the opinion of the majority in 319 U. S. 103), the Court observed that the record showed that the license fee requirement struck down in that case had been discriminatorily imposed upon the members of Jehovah's Witnesses but not upon ministers of other faiths.

The Court stated (at p. 617):

> "We need not shut our eyes to the possibility that use may again be made of such taxes either by discrimination in enforcement or otherwise to suppress the unpalatable views of militant minorities such as Jehovah's Witnesses . . . As the evidence excluded in No. 280 tended to show, no attempt was there made to apply the ordinance to ministers functioning in a more orthodox manner."

See, also, *Thornhill* v. *State of Alabama, supra* (at pp. 97–98); *Grosjean* v. *American Press Co., supra* (at p. 251); *West Virginia* v. *Barnette, supra* (at p. 628).

We submit that Section 304 on its face exhibits elements of fatal vagueness. We do not see how it would be possible for a labor organization subject to Section 304 effectively to conduct a legislative program without living in constant fear that one or another of its activities would run afoul of the Section.

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[11] On the manner in which the precise definition of the offense cures an otherwise vulnerable statute, see *Chaplinsky* v. *State of New Hampshire*, 315 U. S. 568, 574, footnote 8.

The phrase "in connection with any federal election" has no commonly accepted meaning. Neither the dictionary nor the statute nor the legislative history provide any ascertainable standard for determining the meaning of the words. There is no guidance for a labor organization seeking to exercise its right to engage in political activity to enable it to determine at what point it becomes a criminal.

There is no period prior to the election itself which is established as the prohibited or quarantined period. The term "in connection with any federal election" obviously may mean more than endorsement of or support for a candidate who has formally filed. It may mean that activity to induce an individual to become a candidate would be condemned by the statute since this too may be "in connection with any federal election". It may even include post-election activities.

Similarly, the phrase probably embraces activities wholly unrelated to endorsing or opposing candidates. Certainly it could not be denied that even expenditures during an election in support of an issue which had become a prominent campaign issue are expenditures "in connection with" an election. We do not think it necessary further to elaborate the many conceivable types of situations in themselves not only innocent but important and desirable which may possibly fall within the vague boundaries of the law but as to which no guidance is afforded with respect to their legality.

The vagueness and indefiniteness of the term "in connection with any federal election" finds an exaggerated counterpart in the term "expenditure". When literally read it would interdict every form of conduct which would be characterized as "in connection with" a federal election. We have already referred *(supra,* pp. 20–21) to the boundless scope of the whole phrase. It is necessary to add here only that labor organizations and their officers are placed by this new criminal offense under a previous general restraint of a broad pervasive character.

The Government seeks to meet the challenge that the statute is fatally vague by inconsistently referring to two different sources to limit its meaning. We are thus told that the phrase "in connection with any election" means "for the purpose of

influencing the result of the election". This gloss is arrived at by importing into the statute a phrase from Section 307 of the Federal Corrupt Practices Act of 1925. On the other hand, although the Federal Corrupt Practices Act of 1925 contains in Section 304 a definition of the term "expenditure", the Government does not adopt that definition but refers instead to the legislative history of the new section to support its claim that this term has a narrower meaning than the same term as used in other sections of the 1925 Act.

The Government's entire attempt to give new meaning to the statute supports our contention that the statute is too vague to survive the Constitution. We submit further that its *ad hoc* gloss on the phrase "in connection with" is not justified by context or legislative history. Moreover, there is no justification for the Government's reliance upon other portions of the statute to explain the phrase "in connection with" but its refusal to go to the rest of the statute for its definition of "expenditures".[*] Finally, even if the Government's explanation of the meaning of the statute were otherwise acceptable, it would still be fatally vague.

The Government urges that its reading of the phrase "in connection with" imports into the statute what might be termed a constructive wilfulness or *scienter* which cures its claimed indefiniteness (Br., pp. 89–90).

Whatever may be thought of this contention, the fact remains that it still leaves undefined the conduct for which a labor organization may be criminally punished under the Act. Since the term "expenditure" is not made specific, the fact that the conduct must be wilful before it can be held criminal, does not give the statute definiteness. As this Court has pointed out, "wilful conduct cannot make definite that which is undefined." *Screws* v. *U. S.*, 325 U. S. 91, 101–105.

In an effort to impart to the statute some defined limitations, the Government adopts the attempts of its sponsors to improvise limitations upon the statute in legislative debate. There can be no question that limitations upon the scope of

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[*] This inconsistency can only be explained by the fact that, in an effort to save the statute, the Government has selectively emphasized the limiting aspects of its context and history and ignored those aspects which affirm its inherently vague and all-inclusive character.

the statute suggested in debate reflected a realization that a comprehensive reading could not be constitutionally supported. But the attempt in debate to impose saving limitations upon the statute, particularly upon the term "expenditures", simply substitutes one type of constitutional weakness for another.[20]

The legislative history does not save the statute; it merely emphasizes the vagueness of the statute. Thus, when asked if the publication of a union newspaper would be proscribed by the statute, Senator Taft stated that it would if it were supported "by union funds contributed by union members as dues", but not if it derived its funds from subscribers (93 *Cong. Rec.* 6436–6440). In short, whether or not an outlay constitutes a proscribed expenditure depends, in Senator Taft's view, upon the source of the outlay. Senator Taft likewise indicated that a commercial newspaper does not make an "expenditure" in connection with a federal election when the funds it expends are derived from advertising or from sales and not from the treasury of the newspaper corporation. *Id.* Similarly, an "expenditure", according to Senator Taft, is incurred by a newspaper when it publishes a special edition or a pamphlet but not when a routine edition is published. *Id.*[21]

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[20] The dilemma which confronted the sponsors in seeking to avoid unconstitutional all-inclusiveness on the one hand and an unconstitutionally vague limitation in scope on the other has been the subject of frequent comment. See, for example, *Editor & Publisher*, February 21, 1948, p. 36:.

"The First Amendment specifically protects the press from interference. Historically, that guarantee has been protected by the courts (with exceptions under the laws of libel, decency, etc.) regardless of who used the printing press. There is no justification for a statute which says, or which can be interpreted to say, that certain types of people issuing a newspaper in a cooperative way cannot speak their minds on political subjects whereas other types, or individuals, are not forbidden to do so. To prohibit all segments of the press from discussing the merits of political candidates would deprive the American people of a free press. To prohibit one segment of the press from doing so is a similar infringement."

[21] The notion that constitutional protections are lost because special arrangements are made more effectively to reach a particular audience is merely another formulation of the notion that only the ineffective presentation of ideas is protected by the Constitution (see *supra*). Liberty of the press includes liberty of circulation *(Lovell* v. *Griffin, supra)* and the Constitution does not lend itself to the facile legerdemain of sawing a right in half.

Senator Ball indicated further that expenditures derived from and "earmarked from a portion of the dues which the union collects and remits to the newspaper in the form of subscriptions" might not be an expenditure within the meaning of the statute. Senator Taft agreed, if "the newspaper is, so to speak, a going concern". *Id.* at p. 6447. But he nowhere defines what would be "so to speak, a going concern". According to Senator Ball it is not an "expenditure" for a union to print the voting record of a candidate but it becomes an expenditure when the union comments on that record. 93 *Cong. Rec.*, 6447. Senator Taft agreed with this special definition of "expenditure" thus reversing himself.

The statement by Senator Taft that an "expenditure" would include any expenditure of union funds even for a *bona fide* newspaper (93 *Cong. Rec.*, 6437–6440) was subsequently modified so as to create a distinction between expenditures on pamphlets and "*bona fide* newspapers". *New York Herald Tribune*, July 12, 1947, p. 1, col. 4.

Representative Hartley, who is responsible for Section 304, but who had not spoken in the House, flatly asserted that any union newspaper, no matter how it is supported, can legally take a stand upon a political candidate:

> "I am convinced my interpretation of the law will be backed up by the experts and if I am incorrect, I am willing to amend the Act and make it clear." *New York Herald Tribune*, July 16, 1947, p. 3, col. 2.

Senator Ball has added his voice to the general confusion as to the manner in which the term "expenditures" is to be interpreted and has stated that it was intended to apply only to "campaign diatribes" directed against a particular candidate. *New York Times*, September 7, 1947, p. 5, col. 3.

We submit that a statute, the applicability of which turns upon such factors as the source of the expenditure involved, whether from subscriptions or dues; the nature of the expenditures, whether exceptional or routine; the purpose of the expenditures, whether to launch a "diatribe" or not, is not a

statute which the Court can validate as consistent with the guarantees of civil rights."

The legislative history of the term "expenditure" asks far more questions than it answers. For example, we are completely in the dark as to whether the prohibition of the statute apply when earmarked funds voluntarily contributed are expended for a prohibited purpose by a labor organization. Does the statute require a separate fund and a separate entity, as the Government seems to contend (Govt. Br. pp. 58, 60) or is a separate fund sufficient, as the legislative history suggests (Govt. Br. pp. 44–45)?

At what point does the publication of a commercial newspaper become criminal? For example, if a newspaper is run at a loss and "corporate funds" rather than sales or advertising revenues finance its publication does it become subject to the law if it prints campaign propaganda?

And, at what point does a comment upon a candidate's voting record become so "colored" or such a "diatribe" as to bring the statute into play?

It is no answer to wave these matters aside as the Government does, by phrases such as "borderline cases". We submit that, as the above questions indicate, the statute suffers from a dual uncertainty—uncertainty with regard to persons within its scope (compare *Lanzetta* v. *New Jersey*, 306 U. S. 451) and uncertainty with respect to the standard of guilt.

We have already commented on the fact that the Government has failed to define "expenditure" in accordance with the definition contained in Section 304 of the Corrupt Practices Act of 1925. An examination of that section indicates why the Government does not urge that the term "expenditure" as there defined applies to Section 313, as amended."

Such an application would merely extend to the instant stat-

" Senator Taft has recently conceded that Section 304 "might be ambiguous" but has stated that he is opposed to altering or amending the provision before 1949. *New York Herald Tribune*, February 26, 1948, p. 1, cols. 4, 5. In short, working people are, prior to the 1948 election, to exercise their political rights under a concededly vague statute at the peril of going to jail.

" It should be pointed out that prior to the amendment of Section 313 it was assumed that the scope of Section 313 was governed by the defining section of the Federal Corrupt Practices Act. See Clark, *Federal Regulation of Election Campaign Activity*, 6 Fed. Bar J. 1, 12.

ute the confusion which the language contained in that section has created in enforcing the 1925 Act. See, Clark, *op. cit.* As employed in the original 1925 Act, the term "expenditure" is defined to include "a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure" (2 U. S. C. A. Sec. 241 (e), 43 Stat. 1070). This definition is virtually identical with the definition of the term "contribution" contained in the 1925 Act. *Id.* Sec. 241 (d). The definition of "contribution" merely adds the term "subscription" and deletes the terms "payment" and "distribution".

A special committee to investigate senatorial campaign expenditures in 1946 expressly reported that these definitions of "expenditure" and "contribution" are vague and indefinite. The Report states, "failure to further prescribe within more exact limits the nature of each [namely, "contribution" and "expenditure"] has consistently caused confusion. . . ." *Report of the Special Committee to Investigate Senatorial Campaign Expenditures, 1946* (S. Rep. No. 1, Pt. 2, 80th Cong., 1st Sess.)*

Because this is a criminal statute we urge that an independent basis for invalidating it exists by virtue of its failure to provide an ascertainable standard of guilt in accordance with the requirements of the Fifth and Sixth Amendments to the Constitution of the United States. See *Connally* v. *General Construction Company*, 269 U. S. 385; *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81.

Reasonable men can only guess at the meaning of the statute. We submit that the terms of the law are fatally in-

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* Difficulty in enforcing the Federal Corrupt Practices Act and the Hatch Act have drawn from at least one Congressional Committee the concession that the criminal law is an inept means of policing the electoral process. See *Report of Special Committee to Investigate Campaign Expenditures, House of Representatives, 1944* (H. Rep. No. 2093, 78th Cong., 2nd Sess.). The committee, moreover, warned (at p. 11) against the very vice which is complained of here and pointed out that in statutes in this area, as elsewhere "narrow definition and rigidity of interpretation are essential attributes of effective criminal statutes not only as a matter of legal tradition but as a matter of practical enforceability in the United States."

definite, particularly because they afford no security to the right of free-expression.

II.

THAT PORTION OF SECTION 313 OF THE FEDERAL CORRUPT PRACTICES ACT, AS AMENDED BY SECTION 304 OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, WHICH PROHIBITS EXPENDITURES BY A LABOR ORGANIZATION IN CONNECTION WITH A FEDERAL ELECTION ABRIDGES THE FREEDOM OF SPEECH AND PRESS AS WELL AS THE RIGHT TO PEACEABLY ASSEMBLE AND PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES OF MEMBERS OF APPELLEE CONGRESS OF INDUSTRIAL ORGANIZATIONS IN VIOLATION OF THE FIRST AMENDMENT.

The denial to the appellees of their basic constitutional rights which has been discussed above cannot be viewed in isolation and apart from the members of appellee Congress of Industrial Organizations.

The Congress of Industrial Organizations is not a disembodied abstraction. It is an unincorporated association composed of millions of members whose rights are infringed by this legislation. And in this very case the article which brought forth the indictment was prepared at the express request of appellee's members. One of the most important purposes for which the Congress of Industrial Organizations was formed is the achievement of its economic and social objectives through legislative and political action. *Constitution of the Congress of Industrial Organizations, supra.*

Unless a worker is free to join with others and contribute to a common fund for the purpose of pooling the political strength of all the members of the group, he has to that extent been denied not only the right of freedom of speech and freedom of press but the right of freedom of assembly as well. A denial to the Congress of Industrial Organizations, therefore, of political rights is in effect a denial of political rights to the millions of members of the Congress of Industrial Organizations who have formed labor organizations affiliated with the Congress of Industrial Organizations in order to

achieve political goals which as individuals would be beyond their accomplishment.

We have already pointed out that the interests, principles and ideals which motivate working men and women to organize labor unions for purposes of collective bargaining are so interwoven, so intimately entwined and so closely identified with the interests, ideals and principles that prompt them to common political action that the two sets of interests, principles and ideals are incapable of divorce or separation.

It is no exaggeration to state that the evils of inequality between the employer and the employee which gave rise to the federal policy of promoting labor organization and collective bargaining are dwarfed by corresponding evils in the political sphere today. In the 1940 Presidential and Senatorial elections more than 60 members of the duPont family contributed a total of $200,000 to various Republican committees. Over a dozen members of the Pew family contributed $164,500, and contributions from the Rockefeller family totaled over $100,000. See *S. Rep. No. 47* (77th Cong. 1st Sess.).

In 1940 one individual, Lammot duPont, contributed a total of $49,000 to 12 different state committees and two national committees; Edgar Monsanto Queeny contributed $40,375 to 8 state committees and two national committees. See *S. Rep. No. 47* (77th Cong. 1st Sess.). See also, Overacker, *"Campaign Finance in the Presidential Elections of 1940"*, 35 American Political Science Review (1941).

Nor do the records of campaign contributions and expenditures for 1944 present a significantly different picture. In the Presidential and Senatorial campaigns of that year, the following upper income families were among the heaviest contributors: duPont, Frick, Guggenheim, Harkness, Harriman, Lamont, Luce, McCormick, Mellon, Pew, Rockefeller, Sloan, Vanderbilt, and Weir. The various members of the duPont family contributed $109,832.83; the Guggenheim family contributed $28,050.00; the McCormick family contributed $28,000.00. The Mellon family contributions totaled $59,500.00; the Pew family contributions totaled $96,995.76. The contributions of the Rockefeller group totaled $52,400.00. The Sloan, Vanderbilt and Weir contributions stood at $21,250,

$38,000, and $14,842, respectively. *S. Rep. No. 101, Appendix VIII* (79th Cong. 1st Sess.)*

The denial to members of labor organizations of the right collectively to direct their political strength against the overwhelming political strength of anti-labor groups is not only to strip the workers of this country of the right to freedom of speech, freedom of the press, and freedom of assembly (see *Hague* v. *C.I.O., supra; Thomas* v. *Collins, supra; DeMille* v. *American Federation of Radio Artists, supra; Bowe* v. *Massachusetts, supra)* but to disfigure the democratic framework of our entire society and to place one group in our society in permanent political bondage.

III.

THAT PORTION OF SECTION 313 OF THE FEDERAL CORRUPT PRACTICES ACT, AS AMENDED BY SECTION 304 OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, WHICH PROHIBITS EXPENDITURES BY A LABOR ORGANIZATION IN CONNECTION WITH A FEDERAL ELECTION ARBITRARILY DISCRIMINATES AGAINST LABOR ORGANIZATIONS, THEIR OFFICERS AND MEMBERS IN VIOLATION OF THE FIFTH AMENDMENT.

We believe that Section 304 is on its face a palpable violation of the due process clause. A statute aimed solely at labor organizations and no other type of unincorporated association is immediately suspect and there is nothing present in the law which justifies any conclusion other than that of arbitrary discrimination.

Due process of law as it is used in the Fifth Amendment is a basic safeguard. One of the things which it has always guaranteed is that no particular person or group should be

* Many of these family groups and other large contributors not listed in the text are identified with corporations with an impressive anti-labor background. See, *TNEC Monograph No. 29*, U. S. Senate, June 14, 1946, Document 206, for a listing of the corporations dominated, controlled or influenced by the family groups listed in the text. A large number of these corporations have engaged in a variety of anti-labor activities. See National Labor Relations Board, *Table of Cases Decided, vols. I-XLI, inclusive*, Washington, 1942; *Labor Relations Cumulative Digest and Index, Part 2*, Bureau of National Affairs, Washington, 1946; *Labor Relations Cumulative Digest and Index Supplement*, Bureau of National Affairs, Washington, 1947.

arbitrarily singled out for legislative action. As this Court said of the Fifth Amendment in *Hurtado* v. *California*, 110 U. S. 516, 535:

> "But it is not to be supposed that these legislative powers are absolute and despotic, and that the amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. *It must be not a special rule for a particular person or a particular case.*" (Italics supplied.)

Thus even though the Fifth Amendment does not contain, like the Fourteenth Amendment, a clause guaranteeing equal protection of the laws, the courts have recognized not only in the *Hurtado* case, but on many occasions, that discriminatory action which is highly arbitrary and injurious would violate the Fifth Amendment. *Nichols* v. *Coolidge*, 274 U. S. 531; *Wallace* v. *Currin*, 95 F. (2d) 856, 867 (C.C.A. 4), affirmed 306 U. S. 1; *Minski* v. *United States*, 131 F. (2d) 614, 617 (C.C.A. 6); *United States* v. *Ballard*, 12 F. Supp. 321, 325–326 (W.D. Ky.); *U. S.* v. *Yount*, 267 Fed. 861, 863. See also, *Lovett* v. *United States*, 328 U. S. 303.

A law which singles out a particular group in the community for special treatment is justly subject to the condemnation of the Fifth Amendment.

As the court stated in *United States* v. *Ballard*, *supra*:

> "Nothing is more repugnant to the American mind than that . . . among fellow citizens there should be one law for one individual and a different law for another. . . . 'Due process of law' has been defined many times as meaning the law of the land, and the law of the land implies a general public law, equally binding on every member of the community. . . . Purely arbitrary orders directed against individuals or classes are not the law of the land."[*]

[*] It is significant that under state constitutional provisions guaranteeing due process of law (but, like the Fifth Amendment, without a specific "equal protection of the law" clause) the state courts have also stricken down discriminatory and special legislation. *E.g.*, *Metropolitan Trust Co.* v. *Jones*, 384 Ill. 248, 51 N. E. (2d) 256; *Sheldon* v. *Hoyne*, 261 Ill. 222, 103 N.E. 1021; *Charles J. Off & Co.* v. *Morehead*, 235 Ill. 40, 85 N.E. 264; *State* ex rel *Hamby* v. *Cummings*, 166 Tenn. 460, 63 S. W. (2d) 515.

We are aware that courts have allowed to legislatures extremely broad discretion in their classifications. See *Metropolitan Casualty Company* v. *Brownell*, 294 U. S. 580. However, we submit that there is no rational basis which justifies the imposition upon labor organizations of criminal sanctions for engaging in political activity of a type which other classes of unincorporated associations may engage in with impunity.

It should be borne in mind that what has been accomplished by Section 304 is not merely a formal discrimination against one type of entity in favor of another. What is involved here is an attempt by Congress to silence the viewpoint of an entity which speaks for labor and to permit similar entities which speak against labor to go unrestrained. We submit that there was nothing in our national experience prior to the passage of Section 304 which justifies such a judgment. On the contrary, unincorporated associations identified with a business and an anti-labor viewpoint have played a formidable role in our political and legislative processes.[*] See, for example, Blaisdell, *TNEC Report, Economic Power and Political Pressures, Monograph No. 26* (1941); Chase, *Democracy Under Pressure* (1945); Crawford, *The Pressure Boys* (1939); Pearce, *TNEC REPORT, Trade Association Survey, Monograph No. 18* (1941); Gruening, *The Public Pays* (1931); Herring, *Group Representation Before Congress* (1929); McCune, *The Farm Bloc* (1943).

Because we are dealing with civil rights and because we are concerned with the vitality of political processes as they are menaced by Section 304, we cannot treat the discrimination posed by Section 304 in a vacuum. Section 304 must be viewed as what it is—an attempt to silence one viewpoint in the market-place of ideas, to discriminate pointedly against a minority.[**]

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[*] The Trade Association Division of the Department of Commerce, upon the basis of sample surveys, estimates that approximately one-half of the trade associations in this country are unincorporated.

[**] This Court has consistently recognized that discrimination and the opportunity for discrimination renders an invasion of civil rights peculiarly vulnerable because of the handicaps it imposes upon minorities. See *supra* for a discussion on legislation which is so vague as to afford an opportunity for discrimination. On legislation which has a discriminatory purpose, see *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233.

To this discrimination has been imparted a peculiarly offensive irony in that it has been written into a law, namely, the Labor-Management Relations Act, 1947, which itself is regarded as so oppressive by labor organizations as to challenge their very existence and to create a greater need than ever for effective political action in order to secure its repeal. Congress passed a law directed at a particular group in our society and attached to that law a device permanently to shield it from the political consequences of having passed it. This result was achieved not merely by a Congressional forfeiture of civil rights but by cancelling those rights in a discriminatory fashion so that only those affected by the law, namely, labor organizations, but not other unincorporated associations would be subjected to special and extraordinary handicaps.

We submit that what Congress did was not merely unfair and unsound,—the act of discrimination is unconstitutional because it violates the root principle of our constitutional policy which is to preserve the integrity of democratic political processes so that Congress may be responsive to the will of all of the people.

The enormity of the discrimination involved in Section 304 can only be appreciated when certain basic background facts are considered. In the first place, studies show that there is little evidence that labor is or has in the past exercised a disproportionate influence on the electoral process. On the contrary, available records indicate that in recent Presidential elections labor contributed but 5 to 10 percent of all campaign funds—surely an inconsiderable amount when we consider that there are at least 15,000,000 organized workers involved. See Overacker, *Labor's Political Contribution*, 54 Political Science Quarterly 56 (1939).

In contrast—and this needs no extensive demonstration—upper income and employer-minded groups are the principal source of funds for electoral campaigns—the funds expended by these groups vastly outweighing the funds expended by unions. See *supra*, pp. 61–62.

Indeed, if labor were denied the right to oppose the political

activity of upper income groups our democratic balance would be destroyed. As one writer has pointed out:

> "The influence of great wealth in party activity is persistent and at times unchallenged; it is kept in check only by the challenge of other groups with power enough to rise from time to time and raise an effective barrier to the progress of wealth." Key, *Politics, Parties and Pressure Groups* (1942), p. 49.

It is a commonplace that the restrictions upon corporate activity contained in federal legislation dealing with elections have in no way served to diminish or halt the overriding political influence of corporate groups upon our public life. This influence has been preserved both through the activity of powerful individuals who are identified with corporations as well as through the fashioning of evasion devices.[20]

Moreover, employer-minded groups dominate the electoral scene not merely in connection with contributions but also in the area of "expenditures". These groups enjoy a decisive control of the opinion industries,[21] a control which has been increasingly used to discriminate against the participation of labor in the opinion-influencing process.[22]

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[20] See for example, Odegard and Helms, *American Politics* (1938), p. 658; Overacker, *Money in Elections* (1932), pp. 198, 325; Overacker, *Party Campaign Funds in 1932*, 27 Am. Pol. Sc. Rev. 769 (1933); *S. Rep. No. 47* (77th Cong. 1st Sess., 1941); Overacker, *Campaign Finances in the Presidential Election of 1940*, 35 Am. Pol. Sc. Rev. 701 (1941); Clark, *Federal Regulation of Election Campaign Activity*, 6 Fed. Bar J. 1, 8 (1944).

[21] See, *A Free and Responsible Press*, A Report of the Commission on Freedom of the Press (1947).

[22] See, for example, Martin, *Freedom of the Press*, 9 Political Quarterly 373 (1938); Whitney, *Labor Gets No Break in the Press* and Bliven, *Balance Sheet for American Journalism*, in Ickes, Freedom of the Press Today (1941); Sussman, *How Radio Treated Labor in the Elections*, 14 Common Sense 34 (March, 1945); Stewart, *Radio Commentators and Free Speech*, 14 Common Sense 32 (Aug., 1945); Chase, *Sound and Fury*, 128–129 (1942); Hays, *Civil Discussion Over the Air*, 213 Annals 37, 44 (1941); *Freedom in the Opinion Industries* in Lerner, Ideas are Weapons (1939); Lasswell, *Democracy Through Public Opinion* (1941).

The discriminatory practices against labor in the radio field are especially notorious. See Durr, *Freedom of Speech for Whom?* 8 Pub. Op. Q. 341 (1944) and Siepmann, *Radio's Second Chance*, (1946) 104, *et seq.* The National Association of Broadcasters' Code Manual warns (at p. 400) that "Employers are inclined to frown on those stations, especially in small communities, which open their facilities to labor unions."

Section 304 therefore can only be viewed as a statute which seeks to intensify pre-existing inequalities in our political life —inequalities which, it may be added, themselves had much to do with the passage of Section 304.[a]

The inequalities which exist and which Section 304 has intensified can only be appreciated when it is realized that the costs of reaching the electorate in a modern election are enormous. Resort to the techniques of mass communication, the increased costs of basic services, such as newspaper advertisements, meeting hall space, motion pictures, the very increase in size of the electorate, have made the process an increasingly expensive one. If workers are not permitted to pool their funds for the purpose of making their weight felt in the electoral process then our entire political processes will fall prey to small undemocratic wealthy groups which even now dominate access to those processes.

The problem of effective exercise of civil rights in the political arena can no longer be solved by easy resort to a suggestion that civil rights are free when every individual is free to hire a hall. The means for reaching and changing the minds of men are, in today's world, complex, involved and—most important of all—expensive.[b]

A trade union member must enjoy the protection of collective political activity through his labor organization in order to oppose the political aggression of those whom he is powerless to oppose individually. Surely, he needs the protection of group political activity at least to the same extent as a business man who is a member of an unincorporated trade association, a farmer who is a member of an unincorporated agricultural association, a veteran who is a member of an unincorporated veterans' association, a professional who is a member of an unincorporated professional organization. By placing the farmer, the veteran, the business man and the professional in a special position, Congress has struck at the very root of our constitutional protections.

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[a] See, for example, 93 *Cong. Rec.*, April 16, 1947, p. 3600.

[b] See Cherrington, *Our Freedoms and Our Opinions*, 6 Pub. Op. Q. 616 (1942).

IV.

THAT PORTION OF SECTION 313 OF THE FEDERAL CORRUPT PRACTICES ACT, AS AMENDED BY SECTION 304 OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, WHICH PROHIBITS EXPENDITURES BY A LABOR ORGANIZATION IN CONNECTION WITH A FEDERAL ELECTION ABRIDGES RIGHTS RESERVED TO THE PEOPLE BY THE NINTH AND TENTH AMENDMENTS.

As we have pointed out above, political activity is one of the fundamental rights guaranteed to the people by the Constitution. It is not merely the means for engaging in that activity which falls within other specific guarantees of the Bill of Rights which are protected. Rather, political activity itself, the right to organize a political movement and to use in that organization the rights of freedom of association, of the press, of assembly and of speech, is a basic right of the American people. It is this right which defines the character of our government and the rights of freedom of speech, the press, etc., are merely guarantees that this right to engage in political activity shall not be destroyed by arbitrary official action.

These basic residual rights are embodied in the Ninth and Tenth Amendments which are, equally with the First Amendment, a part of the Bill of Rights. These Amendments state specifically: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." (Amendment IX) and reserve "to the people" the powers not delegated to the Federal Government (Amendment X).

While the Tenth Amendment has frequently been relied on in attempts to defeat the exercise of federal regulation on the ground that no power has been granted to the federal government by the Constitution to encompass the regulation in question and that the rights of the states have been infringed, the present case involves not the rights of the states as against the exercise of federal power but rights reserved to the people which are equally protected by the Constitution against both state and federal action. This Court has recognized in *United Public Workers* v. *Mitchell*, 330 U. S. 75, that the right to

engage in political activity is a basic right protected by the Ninth and Tenth Amendments. The Court there stated (at p. 94):

> "We accept appellants' contention that the nature of political rights reserved to the people by the Ninth and Tenth Amendments are involved."

In *State* v. *Pierce*, 163 Wis. 615, 158 N. W. 696, the Supreme Court of Wisconsin made it clear that the corrupt practices concept could not serve as a justification for destroying the basic political rights of the people. In that case the court held invalid a provision of the Wisconsin Corrupt Practices Act outlawing disbursements for political purposes by persons or a group of persons residing outside the county where such expenditures are incurred.

The court thus affirmed the political rights of the people (158 N. W. at 698):

> ". . . Under such a law no pioneer in any reform which depends for its success on a change in the law could leave his own county and communicate his sentiments at his own expense to his fellow citizens of other counties without committing a crime. Under such laws no great propaganda for better laws and better political conditions which has not been formally taken up by a political party can ever be carried on, and the reformer whose eye kindles with the dawning light of a better day must be content to confine his personal activities to the inhabitants of his own small bailiwick. Almost every forward step in political and governmental affairs comes as the result of long agitation and discussion in the press, on the rostrum, and in the open forum of personal contact. This agitation and discussion often goes on for years before the idea is formally indorsed by any party. Yet it will generally be the case that during this period there will be individual candidates in one party or the other, or both, who favor the new thought. Now this law means that in such a situation no man, or group of men, can do a stroke of political work involving expense in any other county than their own, however legitimate and praiseworthy be the means which are used. No political committee will take up the work, for the very good reason that the party organization has not indorsed the doctrine.

> "There are times also when devoted citizens firmly believe that no organized political party stands for the right or deserves support, and that an independent candidacy is necessary. Can it be that under such circumstances these citizens can be wholly deprived of the right to go to any part of the state at their own expense, collect information on the subject, and endeavor by word of mouth or by the distribution of printed matter to put the issue as they see it before such fellow voters who are not residents of their own county? We are very clearly of opinion that this question must be answered in the negative."

It is our contention that the federal government in this case is devoid of power to deprive appellees of the right of political expression. The asserted basis of that power is contained in Article I, Sections 2 and 4, of the Constitution. Article I, Section 2, of the Constitution, commands that "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature". By Section 4 of the same Article "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of choosing Senators".

This Court has justified in a series of cases exertion of power under these sections of Article I. The most recent of such cases is *United States* v. *Classic*, 313 U. S. 299. That case and a line of cases which antecede it are unified by a common affirmation of federal power to preserve the purity of the electoral process. Every exertion of power validated in those cases is justified on the ground that Congress has the right to preserve the purity of the electoral process by banning fraud and violence and the sources of fraud and violence; by insisting upon full disclosure; by insisting upon statements of campaign expenditures; by punishing election officials for neglect of duty.

However, in no case has the power of the government been sustained to do what Congress has sought to do in Section 304.

For we are here dealing with an attempt to sterilize rights in the political arena not to insure their free expression; to impose a blackout upon the electoral process not to bring light to it.

No one may quarrel with the contention that the federal government enjoys certain powers to supervise the conduct of federal elections, but it may not under the guise of supervision destroy the inviolate rights of the people to engage in political activity. The constitutional authority of Congress must be exercised in such a way as to leave intact the rights preserved to the people under Amendments IX and X. And in the exercise of its power to insure free and honest elections, the government may not deny to a free people the means for insuring that elections will be representative. To suggest otherwise is to sanction a form of constitutional cannibalism under which a power designed to preserve a right is used to devour it.

CONCLUSION

In recent years political movements of the people have found expression in a great variety of technically non-political forms.[*]

Political activity is no longer a narrow province occupied exclusively by professional politicians. The conventional apparatus through which, historically, the political process has been organized and forwarded is being increasingly supplemented by organizations of ordinary citizens who seek some effective means of participating in political life.

This intensification of political activity among our people vitalizes our democracy because it promotes more widespread suffrage, because it supplies an important means of educating an electorate too vast to be reached by our conventional political organs, and because it insures that political policies and platforms will reflect the needs of the people, that the outcome of elections will reflect their will, and that the efforts of those elected will serve the public interest.

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[*] The implications of this development in relationship to aspects of the Federal Corrupt Practices Act not involved here are discussed in *Report of the Special Committee to Investigate Campaign Expenditures for the House of Representatives, 1944* (H. Rep. No. 2093, 78th Cong. 2nd Sess., p. 7).

Labor organizations are a part of this wholesome broadening of the base of our political life. The process through which it is being achieved is a process which, the Bill of Rights commands, is to be forever unimpaired. Because Section 304 bars appellees' access to that process it is unconstitutional.

We respectfully submit that that portion of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which prohibits expenditures by a labor organization in connection with a federal election is, for the reasons set forth above, unconstitutional, and that the judgment of the court below should therefore be sustained.

Respectfully submitted,

CHARLES J. MARGIOTTI
LEE PRESSMAN
FRANK DONNER
Attorneys for Appellees

APPENDIX I

TEST OF POLITICAL FREEDOM

By PHILIP MURRAY

President, Congress of Industrial Organizations

On Tuesday, July 15, a special Congressional election will be conducted in one of the Districts of the City of Baltimore.

One of the candidates, Judge Ed Garmatz, has been officially approved and endorsed by the CIO Political Action Committee for the State of Maryland. The candidate for the opposition party is notorious among the working men and women of Baltimore for his anti-union views and activities.

The CIO has been requested by representatives of its members within the Congressional District involved in this election to give publicity to the action of the State PAC and to urge that members of CIO unions in the District cast their votes for Judge Garmatz.

The Congress of the United States, however, has recently enacted a law, commonly known and referred to as the Taft-Hartley Act. This law purports to make it illegal for American working men and women organized into labor organizations and acting through their duly elected officers to expend their common funds to make their views heard and known in matters relating to elections for federal office.

Senator Taft, the foremost sponsor of the new law, has publicly stated his view that it is the purpose, intent and effect of the new law to stifle the voice of labor in political matters and particularly to prevent labor from supplying in its own publications, distributed among its own members, facts and information with respect to current election issues and candidates.

I have been reared in a tradition of respect for the law of the land. In my public and private life I have adhered religiously to the principles of that training. Consistent with those principles I deem it the duty of citizenship to abide by and respect the highest law of the land—the Constitution of the United States.

It has always been my understanding that that document guarantees the basic American rights of free speech, free press,

free assemblage and forbids the denial of life, liberty or property without due process of law. Those guarantees and those protections, I am advised and firmly believe, are and must be available to all without distinction, caste or class.

I am advised and firmly believe that they are rights and protections to which the working men and women of this country, the members of labor unions, the members of CIO unions, are fully entitled.

If the Taft-Hartley Act means what it has been proclaimed to mean, it flagrantly flaunts fundamental principles which have been cornerstones of American tradition and American freedom ever since the founding of our great nation.

I believe that I would be remiss in the performance of my duties as an American citizen if I did not speak and act firmly in support of those great traditions and those vital freedoms which have made America what it is today.

Under the procedures of our courts it is possible to strike down unconstitutional laws only by taking affirmative action in reliance on and in the exercise of the liberties guaranteed by the Constitution.

This I have decided to do.

I have made this decision not in a spirit of defiance or bravado or bitterness. Rather do I act in a spirit of regret that the Congress of the United States should have chosen to curb basic liberties, and in a spirit of hope and trust that the courts of the United States will vindicate those liberties.

I therefore have directed and requested the editor of the CIO NEWS to publish this statement, including the following paragraphs, and to give to this issue of the CIO NEWS proper circulation among the members of CIO unions in the City of Baltimore and, particularly, within the Congressional District in which this election is scheduled to take place.

The Taft-Hartley Act has imposed upon American workers and their unions untold ills and hardships which threaten their living and working standards and the very existence of their organizations. The evils of this law have become well known to members of our unions throughout the length and breadth of our land. It is vital for the preservation of the living standards of America that this law be repealed.

It is apparently the judgment of CIO members and leaders in the City of Baltimore that Judge Garmatz is a candidate whose record, experience and understanding are such that he may be expected to appreciate the evils of this law and to act in the public interest for its repeal. The CIO NEWS belongs to the members of CIO and serves as the organ of expression for the principles and views democratically adopted by its members and affiliates.

In performance of my duty as President of CIO, I therefore open the pages of this publication to an expression of views of the CIO members in Baltimore.

In accordance with their decision and request I take opportunity to urge that all members of CIO residing and voting in the Congressional District in which this election is scheduled to take place cast their votes for Judge Garmatz, and make every effort to bring their neighbors and friends and to all persons eligible to vote in this election a full understanding of the issues involved and of the importance of voting for Judge Garmatz.

I firmly believe that the action which I now take is fully legal under the law of our land. It is my understanding that the issue as to whether proper respect will be paid to the fundamental guarantees and principles of our Constitution must now rest in the hands of the law enforcement agencies of the Federal Government.

APPENDIX II

PROVISIONS IN THE CONSTITUTIONS OF AMERICAN LABOR ORGANIZATIONS RESPECTING POLITICAL AND LEGISLATIVE PURPOSES AND FUNCTIONS.

Selections From Existing Constitutions of National and International Unions Affiliated With the Congress of Industrial Organizations Respecting Political and Legislative Purposes and Functions.

Automobile, Aircraft and Agricultural Implement Workers of America, International Union, United

Article 2, Section 4:

"To educate our membership in the history of the Labor Movement and to develop and maintain an intelligent and dignified membership; to vote and work for the election of candidates and the passage of improved legislation in the interest of all labor. To enforce existing laws; to work for the repeal of those which are unjust to Labor; to work for legislation on a national scale, having as its object the establishment of real social and unemployment insurance, the expense of which to be borne by the employer and the Government."

Article 31, Section 3:

"The purpose of the District Council shall be to recommend to the Regional Director and the International Union, constructive measures for the welfare of Local Unions and their members. It shall discuss comparative wages, rates, agreements, methods of approach, organizational problems, National and State legislative programs and such other problems as may be of general interest to the Local Union membership."

Article 42, Section 1:

"The Local Union shall have the following standing Committees: Executive Board, Constitution and By-Laws, Union Label, Education, Relief, Legislative and Political Act, and such other . . ."

Barbers' and Beauty Culturists' Union of America

Article XIII, Section No. 1:

"A State Organization may be chartered where three or more local unions are desirous of forming such a State Organization, for the purpose of promoting a legislative program beneficial to the hairdressing and barbering professions."

Brewery, Flour, Cereal, and Soft Drink Workers of America, International Union of United

Article II, Section 4:

"Active participation in the political labor movement of the country, on independent labor class lines."

Clothing Workers of America, Amalgamated

Article III:

"(c) To defend and extend democratic institutions and procedures and the civil rights and liberties of its members and all others.

(g) . . . to affiliate with or lend assistance to associations of labor organizations and political organizations; . . . and to use all other appropriate means for the accomplishment of the foregoing objects."

Communications Association, American

Article II (Objects), Section 1:

"(e) To advance the economic, political, social and cultural interests of the workers in the industry;

(f) To aid in the adoption of laws for the economic and social welfare of all workers;

(h) To participate jointly with progressive labor, political, fraternal, cultural and social organizations in activities intended to advance the economic, political and social interests of all workers;

(i) To protect and extend our democratic institutions and the civil rights and liberties of all workers;"

Article II, Section 12.

"The duties and functions of a District Council shall be: (c) To plan and participate in such joint economic, political, social and cultural activities as will benefit and protect the interests of the members of affiliated local unions;"

Electrical, Radio and Machine Workers of America, United

Preamble:

"We pledge ourselves to labor unitedly for the principles herein set forth, to perpetuate our union and work concertedly with other labor organizations to bring about a higher standard of living of the workers."

Farm Equipment and Metal Workers of America, United

Article 5 (Objects), Section 1:

"(e) To advance the economic, political, social and cultural interests of the workers covered by our jurisdiction;

(f) To aid in the adoption of laws for the economic and social welfare of all workers;

(g) To protect and extend our democratic institutions and the civil rights and liberties of all workers."

Article 29, Section 7

"Legislative Director. It shall be the duty of this officer to keep abreast of pending legislation in the municipal, county, state and national legislative bodies, and he shall, in cooperation with the Local Union Executive Board, through all feasible means available, endeavor to acquaint the membership with the contents of such pending legislation and shall undertake measures to insure the support and adoption of legislation advantageous to the labor movement and the defeat of legislation which may be detrimental to the best interests of the membership and workers at large."

Fur and Leather Workers Union, International

Article II (Objects):

"C. Secure legislation safeguarding the economic security and social welfare of the workers in the fur and leather industries, to protect and extend our democratic institutions and civil rights and liberties.

E. . . . to promote and assist independent political expression and action of organized labor in cooperation with all workers and working farmers throughout the United States and Canada."

Furniture Workers of America, United

Article II, (Objects) Section 1:

"e) To advance the economic, political, social and cultural interests of the workers in the industry.

f) To aid in the adoption of laws for the economic and social welfare of all workers.

g) To protect and extend our democratic institutions and the civil rights and liberties of all workers."

Food, Tobacco, Agricultural and Allied Workers Union of America

Article II (Purposes and Objects):

"Section 5. To secure equitable statutory old age pensions, workmen's compensation, extension of unemployment compensation to all workers, and to work for the extension of social and labor legislation, to cover all workers, regardless of industry.

"Section 6. To secure enactment of laws protecting the limbs, lives and health of workers, establishing our right to

organize, prohibiting the use of strikebreakers, preventing the employment of armed guards during labor disputes, and such other legislation as will be beneficial to the workers; to strive for the enforcement of just laws and the repeal of those which are discriminating against the workers of our calling."

Gas, Coke and Chemical Workers of America, United

Article II (Objects):

"Third. To secure legislation safeguarding and promoting the economic security and social welfare of the workers in the industry, to protect and extend our democratic institutions and civil rights and liberties and thus to perpetuate and advance the cherished traditions of our democracy. . . ."

Glass, Ceramic and Silica Sand Workers of America, Federation of

Article II (Objects):

"Section 2—To assist each other to secure employment, to reduce the hours of daily labor, to secure adequate and increased pay for our work by legislation, conciliation, wage agreements, or strikes, and to promote the interest and welfare of its members and their dependents.

"Section 3—To labor for the enactment of legislation that will protect the life and limb of the workers, conserve their health, improve social conditions, and to promote the general well-being of the workers."

Longshoremen's and Warehousemen's Union, International

Article III, Fourth:

"to secure legislation in the interest of labor and to oppose anti-labor legislation."

Marine and Shipbuilding Workers of America, Industrial Union of

Preamble:

". . . The Industrial Union of Marine and Shipbuilding Workers of America further believes in a fraternal front with the membership of all other working class organizations which conduct activities for the furtherance of the economic, political, and educational interests of the working class."

Marine Cooks and Stewards, National Union of

Preamble:

"The Marine Cooks' and Stewards' Union is organized for the purpose of improving the working and living conditions of its members and their families, and to unite them in the struggle to attain the economic, social and political welfare of the communities in which they work and live, and of all peoples."

"The Marine Cooks' and Stewards' Union declares that its purpose in formulating this Constitution is:

5. To participate fully in the common struggle of all trade unions, . . .

(a) against encroachment on the economic and social rights of the workers and upon the democratic rights of the people;

(b) for the satisfaction of the need of workers for security of employment;

(c) for the progressive improvement of wages, hours, and working and living conditions of the workers;

(d) for the full and adequate social security to protect the people and their families against the hazards of unemployment, sickness, accident and old age;

(e) for the adoption of all measures that will further the social and economic well being of the people;

(f) against the passage of any legislation intended to weaken, disrupt or destroy the trade-union movement and its progressive activities.

6. . . . In order to achieve these ends, our Union bases its work upon the following principles:

3. Coordination of economic and political action with other trade unions for the realization of our aims and decisions."

Marine Engineers' Beneficial Association of the United States of America, National

Article III, Section 3. The duties of the National Executive Committee . . .

"They shall be informed by correspondence through the office of the National Secretary of all proposed changes in the laws and rules relative to the Bureau of Navigation and Steamboat Inspection Service or contemplated changes in laws and rules governing employment of Marine Engineers or other licensed officers."

General Laws:

Article V, Section 1, "The appointed committees . . . shall be as follows: . . .

On Legislation, to whom shall be referred all resolutions regarding proposed legislation."

Maritime Union of America, National

Article I, (Objectives) Section 3:

"(c) To increase the wages and improve the conditions of employment of our members by political action, legislation, conciliation joint agreements or strikes.

(e) To secure equitable statutory old age pensions, unemployment insurance and accident insurance.

(f) To insure by legislative enactment laws protecting the limbs, lives and health of our members, especially our right to organize and to strike, prohibiting the use of deception to secure strikebreakers, preventing the employment of privately armed guards during labor disputes, and such other legislation as will be beneficial to the members of our organization.

(j) To secure the enactment of a manning scale for all classes of vessels based on gross tonnage; adequate working conditions and working hours through legislation or economic action.

(m) To establish a legislative committee in Washington, whose object shall be among others to have passed laws beneficial to the interests of maritime workers and enabling them to exercise their franchise, to vote either directly or by absentee ballot.

Mine, Mill and Smelter Workers, International Union of

Preamble:

Article I, Section 2:

"The objects of this organization shall be to unite the various persons working under our jurisdiction into one central body, to practice those virtues that adorn society and remind man of his duty to his fellow man, to elevate his position and to maintain the right of the workers to increase the wages and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes."

"5. We hold that an industrial union and the concerted political action of all wage workers is the only method of attaining this end."

Office and Professional Workers of America, United

Article I, Section 3. . . . to protect, maintain and advance the economic and social itnerests of its members; to aid and promote labor and social legislation, to foster friendly relations with all other organizations whose aims are consistent with the objects of this National Union."

Public Workers of America, United

Article II, Section 2:

"Legislation, negotiation and education shall be the basic principles employed in achieving these ends. . . ."

Packinghouse Workers of America, United

Article II:

"C. To secure legislation and support policies that will safeguard and improve our economic security and social welfare. To protect and extend our democratic institutions, civil rights

and liberties and thus to perpetuate the cherished traditions of our democracy."

Paperworkers of America, United

Preamble:

"The development of modern industry has made the labor union a necessity for workers. In our complex and highly organized society, workers are powerless unless they are united along industrial lines. Through the union, workers can achieve both voice and strength in the affairs of industry and the nation. By industrial and political action, workers can attain their just and equitable place in society."

Article II:

"2. To increase the wages and improve the conditions of employment of our members through collective bargaining, political action, trade-union cooperation and all other legitimate means.

3. To endeavor to secure through negotiations and legislation shorter hours of work by day and week.

5. To provide for the education of our children by lawfully prohibiting employment under eighteen years of age, and further, by providing adequate public educational facilities of high standards.

6. To secure equitable statutory old age pensions, workmen's compensation and unemployment insurance laws.

7. To enforce existing laws beneficial to the commonweal and repeal those which are discriminatory and unjust.

8. To secure by legislative enactment, laws protecting the lives, limbs, and health of workers; guaranteeing the right of workers to organize without fear; prohibiting the use of strikebreakers; prevent the use of force and intimidation against workers during labor disputes; and such other legislation as will be beneficial."

Playthings, Jewelry and Novelty Workers International Union

Article III:

"I. To secure equitable statutory old age pensions, unemployment insurance and accident insurance.

J. To secure by legislation enactment, laws protecting the limb, lives and health of our members, especially our right to organize and to strike, prohibiting the use of deception to secure strikebreakers, preventing the employment of privately armed guards during labor disputes and such other legislation as will be beneficial to our members."

Retail, Wholesale and Department Store Employees of America, United

Declaration of objectives and principles

"The United Retail, Wholesale and Department Store Employees of America will strive to preserve and extend the democratic processes of our country, protect civil liberties and aid in the adoption of legislation which will promote the economic and social welfare of its members and that of labor in general. Through unity of purpose and action, through collective bargaining and legislation, the [Union] is dedicated to the ideal of making the jobs of its members the best jobs that can be devised from the point of view of wages, hours of work, physical conditions and human relations."

Rubber Workers of America, United

Preamble:

"Labor acting along economic and political lines can secure a more equitable distribution of the nations' wealth to all those performing useful service to society."

Article II, Section 1:

"(g) To cooperate with other labor organizations to secure just recognition of the rights of labor in national, state, county and municipal government; to support legislation tending to bring government closer to the people and to bring the people at large closer to government for the benefit of the mass of the people, of whom the overwhelming majority are workers."

Shoe Workers of America, United

Article II, Section 2:

"(a) To work for the establishment of adequate Child Labod Laws; Workmen's Compensation; Old Age Pensions; Social Security and other social legislation which will benefit the workers.

(c) To enforce existing just laws and to secure the repeal of those which are unjust.

(d) To secure enactment by legislation of laws which will protect the lives, the health, vision and limbs of our members; prohibit the use of strikebreakers and prevent the use of privately armed guards and spies against the workers."

Steelworkers of America, United

Article II—Objects:

"Third. To secure legislation safeguarding the economic security and social welfare of the workers in the industry, to pro-

tect and extend our democratic institutions and civil rights and liberties and thus to perpetuate the cherished traditions of our democracy."

Stone and Allied Products Workers of America, United

Preamble

"And believing in organization based on sound principles as to the wisest use of our citizenship, based upon the class struggle, upon both economic and political lines, with a view to restore the common weal of our government to the people, and using the natural resources and means of production and distribution for the benefit of all the people:"

Textile Workers Union of America

Article II:

"Section 1. (c) To defend and extend their [textile workers] civil right and liberties.

"Section 2. The International Union shall accomplish the foregoing purposes by organizing the unorganized workers in the textile industry, educating its membership, negotiating collective bargaining agreements with employers, securing legislation, and by all other appropriate means."

Transport Service Employees of America, International Union, United

Article II:

"Objects. . . . To educate our membership in the history of the American Labor Movement and to develop and maintain an intelligent and dignified membership; to vote and to work for the passage of improved legislation in the interest of all labor, both State and National; to enforce existing laws, to work for the repeal of those which are unjust to labor; to work for legislation on a national scale, having as its object the establishment of real social and unemployment insurance at the expense of the employer and the government."

Transport Workers Union of America

Article II—Objects:

"(e) To advance the economic, political, social and cultural interests of the workers in the industry;

(f) To aid in the adoption of laws for the economic and social welfare of all workers;

(g) To protect and extend our democratic institutions and the civil rights and liberties of all workers."

Utility Workers Union of America

Preamble:

"We, the Utility Workers of America, believing . . . that Labor acting along economic and political lines can secure a more equitable distribution of the nations' wealth for all those performing useful service to society;"

Article II—Objects:

"Section 3. To secure legislation safeguarding the economic security and social welfare of the workers in the industry, to protect and extend our democratic institutions and civil rights and liberties and thus to perpetuate the cherished traditions of our democracy."

Woodworkers of America, International

Article I, Section 6:

"It shall be the responsibility of the membership herein, through its Union, to maintain an alert and considerate watch over its economic and political interests in all their multifold aspects. Therefore, the Officers and members of this Union are charged with the responsibility of advancing by every honorable means the economic welfare of the workers through securing increases in wage levels, reduction in their hours of toil and the improvement of their working conditions. In addition, recognizing the common interest of all working people in advancing their level through political means, it shall be the duty of all the Officers and members of this Union to secure by joint action with other progressive bodies, legislation, working men's compensation, old age pensions, the elimination of child labor, protection and extension of civil rights and liberties of the people of this country, and further to safeguard and advance the rights of labor to organize, strike and bargain collectively."

Selections From Existing Constitutions of National and International Unions Affiliated With the American Federation of Labor Respecting Political and Legislative Purposes and Functions.

Airline Dispatchers Association

Article I, Section 5:

"To sponsor and support legislation and regulations affecting air line dispatchers and the industry as a whole, which may improve working conditions."

Air Lines Pilots Association

Article I, Section 6:

"To urge, support, and sponsor the passage of legislation and regulations affecting air line pilots which will improve, protect, and increase the safety of their working conditions."

Automobile Workers of America, International Union United

Article II:

"To educate our membership in the history of the American Labor Movement and to develop and maintain an intelligent and dignified membership; to vote and work for the passage of improved legislation in the interest of all labor; to work for the repeal of those laws which are unjust to labor; to work for legislation having as its object the establishment of real social and unemployment insurance, the expense of which is to be borne by the employer and the Government."

Barbers, Hairdressers and Cosmetologists' International Union of America, The Journeymen

Article XVIII, Section I:

"If one or more members of a local union, or a local union, shall be found guilty of individually or collectively preventing the passage or enforcement of legislation relative to the barbers or beauty license or Sunday closing laws, or any other legislation endorsed by the International, or shall either individually or collectively, in a personal, professional, or political capacity, or in any other way, aid, counsel or advise, either directly or indirectly, in any cause, movement or thing that may, will, or has prevented, weakened or delayed the passage or enforcement of such legislation shall each be fined a sum not less than $25.00 nor more than $500.00.

Bill Posters and Billers of America, International Alliance of

Preamble:

"While we are opposed to entering any political party as a body, we declare it to be our duty to use our strength and influence with the law-making powers to secure the enactment of laws beneficial to our interests and those of the wage-earner in general."

Carmen of America, Brotherhood Railway

Preamble:

"To cooperate with all trade, labor and farmer organizations to secure the passage of such laws as are beneficial to the working class."

Constitution:

"Said Boards shall be organized for the purpose of protecting the interests of members along legislative lines in the several states, territories and provinces of the United States, Canada, Newfoundland, and Mexico, and shall publish report of action and legislation that has been attempted or completed, regularly in the *Carmen's Journal.*"

Carpenters and Joiners of America, United Brotherhood of

"Resolved, that it is of the greatest importance that members should vote intelligently, hence the members of this Brotherhood shall strive to secure legislation in favor of those who produce the wealth of the country, and all discussions and resolutions in that direction shall be in order at any regular meeting, but party politics must be excluded."

Cement, Lime and Gypsum Workers International Union, United

Article III, Section 3:

"To secure equitable old-age pensions, workmen's unemployment insurance and health insurance, and to amend and improve legislation in the present workmen's compensation laws, and to amend and enact such other legislation as will be beneficial to our members and other labor organizations."

Chemical Workers Union International

Article II, Section 1:

"To foster and support legislation in the interests of the working class."

Clerks, National Federation of Post Office

Article VII, Section 2:

"The Legislative Representative shall have charge of and, under the supervision of the President, shall direct all activities of the Federation in regard to legislation of interest to members of and perform such other duties as this Federation may require of him."

Clerks, Brotherhood of Railway

Article XXIII, Section:

"The Grand President in consultation with the Grand Executive Council, in absence of Convention action, shall determine the policy of the Brotherhood in respect to Federal Legislation."

Section 7:

"The State or Provincial Legislative Board shall elect a State or Provincial Legislative Chairman. The Legislative Chairman, when authorized by the Legislative Board . . . shall peruse all bills, memorials and resolutions introduced in the legislature and oppose all legislation detrimental to the welfare of the Brotherhood; he shall have introduced and support such bills and resolutions as advances the welfare of the members of the Brotherhood, subject to the policy of the Brotherhood . . ."

Section 9:

"When such policy has been declared, no member of the Brotherhood shall appear before any legislative committee, Legislature, State, Provincial or Federal executive in opposition to such a program or policy in any capacity except that of a private citizen."

Clerks' International Association, Retail

Section 3 (e):

"While we are opposed to entering any political party as a body, we declare it to be our duty to use our influence with the law making power to secure the enactment of laws beneficial to our own interests, and those of the wage workers in general."

Coopers' International Union of North America

Preamble:

"To prevent undue influence on the part of combinations of capital over legislative bodies by which laws detrimental to labor are secure, and, as far as possible, to obtain through such legislative bodies the enactment of such equitable laws as will be of benefit to the working class."

"To oppose in every way undue assumption of power on the part of the judiciary, arbitrarily governing labor organizations by means of court injunctions."

Engineers, International Union of Operating

Article II, Section 4:

"To watch over all legislative measures of actions by public authority which may effect or tend to effect the interests of the membership; to use its influence to secure the promotion, rejection, or amendment of legislation as the exigencies of the occasion may demand."

Government Employees, American Federation of

Article II, Section 2:

"The Federation shall strive to promote efficiency in the governmental service, and shall advance plans of improvement to be secured by legislative enactment through cooperation with governmental officials and by other lawful means."

Handbag, Luggage, Belt and Novelty Workers' Union, International

Article I, Section 3:

"The object of this International Union shall be to unite in one organization all workers, men and women, eligible for membership; to promote the material and intellectual welfare of its members; to secure and preserve for them higher wages, shorter hours and other improvements to the conditions of labor; to aid and promote labor and social legislation and to assist any movement for the advancement of such legislation . . ."

Hatters, Cap and Millinery Workers International Union, United

Article I, Section 3:

". . . to aid and promote labor and social legislation and to assist any movement for the advancement of such legislation."

Hotel and Restaurant Employees and Bartenders International Union

Section 88:

"He (the General President) shall be empowered to appoint a special legislative representative to State Legislature and Provincial Parliaments when, in his judgment, the interest of our craft people may be served."

Longshoremen's Association, International

Article IV:

". . . to secure and promote laws for the benefit of its members and labor generally."

Maintenance of Way Employees, Brotherhood of

Article V, Section 11 (a):

"He (the President) shall also have the power to appoint legislative representative, when necessary, to look after the interests of the Brotherhood, when approved by the Executive Board."

State Legislative Department:

Article I, Section 1:

"For the purpose of protecting the interests of its members along legislative lines, in the several states, territories and the District of Columbia of the United States, the Brotherhood of Maintenance of Way Employes shall maintain a department to be known as the Legislative Department of the Brotherhood of Maintenance Workers . . ."

Musicians, American Federation of

Article XIX, Standing Resolutions:

28. "The Federation endorses the political policy of the American Federation of Labor, to Wit: 'Stand faithfully by your friends and elect them. Oppose your enemies and defeat them'."

34. "Locals are urged to support, wherever possible, any legislation which will tend to establish old-age pensions in the various states and the abolition of poor houses."

37. "The Federation endorses and supports the President's National Committee for legislation leading to permanent fair employment practices."

44. "The American Federation of Musician's Convention assembled hereby endorses and urges support of all social security legislation endorsed by the American Federation of Labor."

Post Office and Railway Mail Handlers, National Association of

Article II, Section 2:

"The association shall strive to advance the interests of its members through cooperation and legislation."

Seafarers International Union of North America

Article IV, Section 1:

"To act on the affiliated Unions' behalf in connection with any bills pending before any Federal or State legislative body."

State, County and Municipal Employees, American Federation of

Article II, Section (h):

"To promote civil service legislation and career service in government."

Section 2 (c):

"Promotion of required desirable legislation."

Signalmen, Brotherhood of Railroad

Article I, Section 74:

"The Council shall give due consideration to all questions of national and international character which affect the wages and working conditions of the membership."

Telegraphers, The Order of Railroad

Article VI, Section 8:

"It shall be the duty of the Committee on State and National Legislation to recommend legislative movements and the passage of laws for the amelioration of the condition of the wage earner."

Textile Workers of America, United

Objects:

6. "To use all our efforts to secure, by all fair and honorable means, human labor legislation for textile workers . . ."

Tobacco Workers, International Union

Preamble:

". . . to teach the use of rights of citizenship intelligently and the wisdom of acting in unison along social, economic and political lines for the perpetuation of the Union, and the preservation of our democratic form of government in the interest of a higher standard of living among the toiling masses . . ."

Typographical Union, International

Resolutions, Section 3:

18. "That the 88th Convention of the International Typographical Union urges members of the Congress and the Senate of the Government of the United States to amend the Social Security Act."

19. "That the International Typographical Union goes on record as favoring amendments to the Federal Social Security Act which would provide old age and survivor's benefits for employes of religious, educational and charitable institutions; that the officers of the I.T.U. seek the cooperation of all labor organizations in support of such amendments."

20. "That the International Typographical Union delegates to the American Federation of Labor and the Canadian Trades and Labor Congress be instructed to urge those bodies to seek enactment of legislation by the various states and provinces compelling employers whose employes are engaged in a labor dispute to insert such information in any advertisements for new employes."

Upholsterers' International Union of North America

Article XII, Section 3:

"The International Union may become affiliated with any department, bureau or committee of the American Federation of Labor or friendly economic, political or legal organizations not antagonistic or hostile to the American Federation of Labor or this International at the discretion of the General Executive Board."

Wall Paper Craftsmen and Workers of North America, United

Article II, Objects:

". . . to foster and promote labor and social legislation and to assist in movements for the advancement of such legislation . . ."

Yardmasters of America, United

By-Laws, Section 11:

"The President shall represent the Organization for the purpose of taking care of the best interest of the Organization and its membership before the tribunals created by the Acts of Congress . . ."